

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 76-7339

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IN THE  
**United States Court of Appeals**  
For the Second Circuit

BRITISH AIRWAYS BOARD and  
COMPAGNIE NATIONAL AIR FRANCE,  
*Plaintiffs-Appellees,*

*v.*

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY and  
WILLIAM J. RONAN, W. PAUL STILLMAN, JAMES G. HELLMUTH,  
VICTOR R. YANITELLI, ANDREW C. AXTELL, GEORGE F. BER-  
LINGER, MILTON A. GILBERT, ROBERT R. DOUGLAS, JAMES C.  
KELLOGG, III, GUSTAVE L. LEVY, MATTHEW NIMETZ, ALAN  
SAGNER,

*Defendants-Appellees,*

and

TOWN OF HEMPSTEAD, INCORPORATED,  
VILLAGE OF LAWRENCE, INCORPORATED,  
VILLAGE OF CEDARHURST, INCORPORATED,  
VILLAGE OF ATLANTIC BEACH, and  
ROBERT F. CHECK, MONA GOTTESMAN, and  
HERBERT WARSHAVSKY,  
*Applicants for Intervention-Appellants.*

On Appeal from Order of United States District Court for the  
Southern District of New York, Judge Milton Pollack,  
Denying Appellants' Motion to Intervene

## APPELLANTS' APPENDIX



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76-1276 Judge Pollack British Airways Board, et ano. -vs- Port Authority of N.Y.  
N.J. et al.

DATE	NR.	PROCEEDINGS
03-17-76	1	Filed complaint and issued summons.
03-17-76	2	Filed Plcff Compagnie Nationale Air France Affidvt&Order appointing individuals to Serve Summons&Complaint by Roy W.McBride,Thomas J.Benz,Timothy R.Cappel or any of them who is citizen of U.S.&over 18 yrs of age in place&stead of U.S.Marshall.Clk.
03-18-76	3	Filed Summons with Affidvt of Service by Thomas J.Benz of 15 true copies personally to Francis X.Curley ,atty for defts on 3/17/76.
04-06-76	4	Filed ANSWER of Defts. PJF
4/7/76		<i>The Trial before Pollack, J. Affidvt</i>
06-02-76	5	Filed Pltffs/British Airways Board/opposes motion of Town of Hempstead to intervene in this action against Port Authority of NY&NJ.
06-04-76	6	Filed Pltff Air France in opposition to motions to intervene.
07-04-76	7	Filed Town of Hempstead, Incorp. Village of Lawrence, Incorp. Village of Cedarhurst, Incorp. Village of Atlantic Beach, Robert F. Check, Nona Gottesman and Herbert Marshawsky motion to intervene as defts,etc.
07-06-76		Filed memo-and. on paper # 7 ...Several municipalities, organizations, and private individuals have moved to intervene in this action per 24(a)(b). For the reasons which appear hereafter, the motions are denied. Leave to renew the motions will be granted, however, on good cause shown...Pollack, J. nn
07-06-76	8	Filed Friends of the Earth, et al.'s notice of motion re: intervention.
07-06-76		Filed memo-and. on paper # 8...Motion denied. See memo of this date on appl. of Town of Hempstead, et al. Pollack, J. nn
07-12-76	9	Filed Pltff's Affidvt&notice of Motion for summary judgment ret.9/13/76, 1:00 P.M.
07-12-76	10	Filed " Memorandum in support of motion for "
07-12-76	11	Filed Exhibits to Affidvt of John A. Ellis for pltff's motion for summary judgment.
07-12-76	12	Filed Applicants'Reply to pltffs'opposition to intervention.
07-12-76	13	Filed Memorandum supporting application for intervention.
07-16-76	14	Filed Applicants for Intervention Notice of Appeal from Order denying motion of applicants to intervene as matter of right, or in alternative to intervention, & alternatively argument to provisions of Rule 24(c) & Rule 24(b)(2). EWP entered 7/16/76. (mailed copies to William C. Clark, Katherine Ellis, et al. J. Falvey, Esq. on 7/16/76)
07-16-76	15	Filed letter dated June 8, 1976, from Patrick J. Falvey, General Counsel, Port Authority of N.Y. & N.J., to Judge Pollack, re: reply to notices to intervene.

A TRUE COPY  
DAVID D. BURCHFIELD - Clerk

*[Signature]*  
DAVID D. BURCHFIELD

A1.

BEST COPY AVAILABLE



(Caption Omitted)

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

1. This is a suit for declaratory and injunctive relief to declare unlawful and to enjoin any actions or inactions by defendants that are intended to or have the effect of preventing, delaying or impeding the operation by plaintiffs British Airways Board ("British Airways") and Compagnie Nationale Air France ("Air France") of the Concorde aircraft at John F. Kennedy International Airport ("JFK") in New York on the ground that such actions or inactions are in violation of the United States Constitution, United States statutes and the international obligations of the United States arising under treaty or otherwise. The bases for plaintiffs' claims are that:

(a) Such actions or inactions by defendants invade a field of regulation that has been preempted by a comprehensive scheme of federal regulation and by an express federal decision authorizing British Airways and Air France to conduct limited operations of the Concorde into and out of JFK, and are, therefore, invalid under the Supremacy Clause, Article VI, Section 2, of the United States Constitution.

(b) Such actions or inactions by defendants invade federal sovereignty over the navigable air space of the United States and are, therefore, invalid under the Supremacy Clause.

(c) Such actions or inactions by defendants are inconsistent and in conflict with valid and binding treaties, international agreements and obligations of the United States, and are, therefore, invalid under the Supremacy Clause.

(d) Such actions or inactions by defendants have a substantial adverse effect on the foreign relations of the United States and are inconsistent with an express decision by the federal government authorizing British Airways and Air France to operate the Concorde aircraft into and out of JFK, a decision made in the light of express federal recognition of the effect of its decision on the conduct of United States foreign relations. Such actions or inactions, therefore, are invalid as an unconstitutional interference with the exclusive authority of the federal government to conduct foreign relations.

(e) Such actions or inactions by defendants burden interstate and foreign commerce; and invade



an area that requires uniformity of regulation by the federal government. Such actions or inactions, therefore, are invalid under the Commerce Clause, Article I, Section 8, Clause 3, of the United States Constitution.

#### Jurisdiction and Venue

2. The plaintiffs' claims arise under the Constitution, certain laws including acts of Congress regulating commerce, and treaties and international agreements of the United States. Plaintiff British Airways is a citizen of the United Kingdom and Air France is a citizen of France. The defendants are citizens of the states of New York and New Jersey. The matter in controversy exceeds the sum of \$10,000, exclusive of interest and costs. The jurisdiction of this Court is therefore invoked pursuant to 28 U.S.C. §§1331(a) (federal question), 1332(a) (diversity of citizenship), 1337 (commerce clause) and 2201-202 (declaratory judgment). The venue of this proceeding is in this Court pursuant to 28 U.S.C. §1391(b).

3. There exists between the parties an actual controversy, justiciable in nature and within the jurisdiction of this Court, in respect of which this Court can



render an adequate and effective judgment that will advance the interests of justice.

#### Parties

4. (a) Plaintiff British Airways is a public corporation of the United Kingdom of Great Britain and Northern Ireland, and is a foreign air carrier engaged in foreign air transportation within the meaning of the Federal Aviation Act of 1958, 49 U.S.C. § 1301 et seq. British Airways is a designated air carrier of the United Kingdom pursuant to the Air Services Agreement between the United States of America and the United Kingdom, done at Bermuda, February 11, 1946, as amended (60 Stat. 1499, T.I.A.S. 1507) (the "Bermuda Agreement"), for the purpose of operating air services on certain routes named therein, including, inter alia, the route between London and New York. British Airways is the holder of a foreign air carrier permit issued by the Civil Aeronautics Board ("CAB") pursuant to section 402 of the Federal Aviation Act (49 U.S.C. §1372) and approved by the President of the United States, authorizing it, inter alia, to engage in foreign air transportation of persons, property and mail between London and New York. (CAB Order 74-4-17, approved by the President, April 2, 1974.) British

Airways is also the holder of operations specifications issued by the Federal Aviation Administration ("FAA") pursuant to FAR 129 (14 C.F.R. §129) which specify that it may conduct operations at New York through JFK, and which, pursuant to the Decision and Order of the Secretary of Transportation, February 4, 1976, are being amended to specify that it may conduct operations at JFK with Concorde aircraft subject to certain conditions and limitations.

(b) Plaintiff Air France is a public company of the Republic of France ("France") and is a foreign air carrier engaged in foreign air transportation within the meaning of the Federal Aviation Act. Air France is a designated air carrier of France pursuant to the Air Transport Services Agreement between the United States of America and France, done at Paris, March 27, 1946, as amended (61 Stat. 3445, T.I.A.S. 1679) (the "Paris Agreement"), for the purpose of operating air services on certain routes named therein, including, inter alia, the route between Paris and New York. Air France is the holder of a foreign air carrier permit issued by the CAB pursuant to section 402 of the Federal Aviation Act and approved by the President of the United States, authorizing it, inter alia, to engage in foreign air transportation of persons, property and mail



between Paris and New York. (CAB Order 69-12-58, approved by the President, December 11, 1969.) Air France is also the holder of operations specifications issued by the FAA pursuant to FAR 129 which specify that it may conduct operations at New York through JFK, and which, pursuant to the Decision and Order of the Secretary of Transportation, February 4, 1976, are being amended to specify that it may conduct operations at JFK with Concorde aircraft subject to certain conditions and limitations.

5. Defendant The Port Authority of New York and New Jersey ("the Authority") is a body corporate and politic created as a joint agency of the States of New York and New Jersey by a compact (supplementing and amending an existing agreement of 1834 between the two States), entered into by the two States in April, 1921 and approved by joint resolution of Congress on August 23, 1921. The Authority consists of twelve Commissioners, six appointed by the Governor of New York and six appointed by the Governor of New Jersey, constituting a board and having a Chairman and Vice-Chairman elected from their number. Each of the defendant Commissioners is a citizen of either the State of New York or the State of New Jersey. The Authority maintains and operates JFK under lease from the City of New York and has its executive offices at One World Trade Center, New York, New York 10048, where each of the Commissioners performs official functions on behalf of the Authority.

### Facts Giving Rise To The Controversy

6. On February 4, 1976, William T. Coleman, Jr., United States Secretary of Transportation ("the Secretary"), rendered a Decision and Order authorizing plaintiffs to conduct limited scheduled commercial operations of the Concorde aircraft to and from the United States for a trial period not to exceed 16 months. Specifically, the Secretary ordered action that would permit, subject to the terms and conditions set forth in the Decision and Order, two Concorde flights a day by each plaintiff into and out of JFK and one Concorde flight a day by each plaintiff into and out of Dulles International Airport ("Dulles") in Virginia, serving Washington, D.C. A copy of said Decision and Order will be filed with the Court contemporaneously with the filing of this Complaint.

7. In rendering his Decision and Order, the Secretary acted in response to formal applications by plaintiffs for amendment of their "operations specifications" to specify the Concorde aircraft as a type of aircraft to be flown at JFK and Dulles, pursuant to the Federal Aviation Act.

8. By letter dated March 11, 1976, plaintiffs notified the Authority of their intention to schedule commercial flights at JFK beginning on or about April 10,



1976. A copy of said letter is annexed hereto as Exhibit A.

9. On March 11, 1976, the Authority denied permission to plaintiffs to operate the Concorde into or out of JFK, asserting, as grounds for its decision, a desire to make an independent evaluation of noise data and community reaction relative to the Concorde, based upon operating experience at Dulles Airport, Heathrow Airport in London, and Charles de Gaulle Airport in Paris. A copy of the resolution denying permission for supersonic transport operations at JFK, together with a letter of transmittal thereof, is annexed hereto as Exhibit B.

COUNT I  
PREEMPTION

A. Generally

10. Plaintiffs incorporate by reference paragraphs 4 through 9 of this Complaint.

11. Secretary Coleman's Decision and Order is in implementation of a broad and comprehensive regulatory scheme to control and regulate the use of the navigable airspace and aircraft operations in the United States. Congressional action authorizing and directing such regulation is contained in the Federal Aviation Act; the Department of Transportation

Act of 1966 (the "DOT Act"), 49 U.S.C. §1651 et seq.; and the Noise Control Act of 1972, Public Law 92-574, 86 Stat. 1234.

(a) Congress has stated that "[t]he United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States . . . , " Federal Aviation Act §1108(a), 49 U.S.C. §1508 (a), and "navigable airspace" is defined to include all airspace "above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft." Id. §101(24), 49 U.S.C. §1301(24).

(b) Congress established the FAA, within the Department of Transportation, DOT Act § 3(e)(1), 49 U.S.C. §1652(e)(1), and conferred upon the FAA the broad powers and responsibilities relating to aviation safety that are set forth in the Federal Aviation Act.

(c) Certain responsibilities under the Federal Aviation Act relating to environmental policy, overall aviation policy and international relations are vested in the Secretary of Transportation. The Secretary has the responsibility under Section 305 of the Federal Aviation Act, 49 U.S.C. §1346, "to encourage and foster the development of civil aeronautics and air commerce in the United



States and abroad" and the responsibility under Section 1102 of the Federal Aviation Act, 49 U.S.C. §1502, to respect "any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country. . . ." In addition, the DOT Act charges the Secretary with "the development of national transportation policies and programs conducive to the provision of fast, safe, efficient and convenient transportation . . . ." DOT Act §2(a), 49 U.S.C. §1651(a). The Secretary is also instructed to "stimulate technological advances in transportation . . . . Id. § 2(b)(1), 49 U.S.C. § 1651(b)(1).

(d) Congress has granted to the CAB extensive responsibilities in areas affecting the use of the navigable airspace and aircraft and, in particular, the operations of aircraft in common carrier commercial service in the United States and between the United States and foreign countries.

B. Federal Regulation of Foreign  
Air Carrier Operations

12. The operations of a foreign air carrier within the navigable airspace of the United States are subject to a broad and comprehensive federal scheme of regulation and licensing.

A 11

(a) Congress has provided that no foreign air carrier may engage in foreign air transportation, which is commercial common carriage of persons or property or the carriage of mail between the United States and a foreign country, unless there is in force a permit issued by the CAB and approved by the President of the United States. Federal Aviation Act §§ 402(a), 801, 49 U.S.C. §§1372(a), 1461. Foreign air carrier permits are issued after notice and opportunity for hearing upon findings by the CAB that the transportation proposed will be in the public interest and that the carrier is fit, willing and able to perform the transportation and to conform to the Federal Aviation Act and rules and regulations of the CAB thereunder. Id. §402(b), 49 U.S.C. §1372(b). Any permit is subject to the prescription by the CAB of reasonable terms, conditions and limitations in the public interest. Id. §402(e), 49 U.S.C. §1372(e).

(b) Pursuant to the statutory authority previously noted, the FAA Administrator has also promulgated detailed regulations controlling the operations of foreign air carriers holding permits



issued by the CAB. These regulations are generally contained in Part 129 of the FAA regulations, FAR 129, 14 C.F.R. § 129.1 et seq.

(i) The FAR 129 regulations provide that a foreign air carrier must "conduct its operations within the United States in accordance with operations specifications issued by the Administrator, including --

- "(1) Airports to be used;
- "(2) Routes or airways to be flown; and
- "(3) Such operations, rules and practices as are necessary to prevent collisions between foreign aircraft and other aircraft." 14 C.F.R. §129.11(a).

(ii) A foreign air carrier may operate an aircraft in the United States on the condition that "that aircraft carries current registration and airworthiness certificates issued or validated by the country of registry and displays the nationality and registration markings of that country." 14 C.F.R. §129.13(a). The application forms for operations specifications prescribed by FAR 129 includes the type of aircraft to be flown. 14 C.F.R. §129, App. A.

C. Federal Regulation of Aircraft Noise

13. The Federal government has also developed a broad and comprehensive scheme to control and regulate aircraft noise levels. Congress, in enacting the Noise Control Act of 1972, which amended Section 611 of the Federal Aviation Act, 49 U.S.C. § 1431, has expressly directed the FAA Administrator, "[i]n order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom . . . , " 49 U.S.C. §1431(b)(1), to consult with the Secretary of Transportation and the Administrator of the Environmental Protection Agency ("EPA") and thereafter to "prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom . . . . " 49 U.S.C. § 1431(b)(1), consistent with the considerations set forth in 49 U.S.C. § 1431(d) including "whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft, aircraft engine . . . . to which it will apply . . . ." Pursuant to this direction, the FAA Administrator has pursued a broad federal regulatory program to control and abate aircraft noise. Specific federal actions respecting supersonic aircraft noise standards have been taken pursuant



to the noted statutory authorizations and directions, including a rule making proceeding that has not yet been completed.

D. Express Federal Action Authorizing  
Concorde to Operate at JFK

14. Plaintiffs British Airways and Air France have been designated by Her Majesty's Government and the Republic of France, respectively, pursuant to pertinent provisions of the Bermuda and Paris Agreements, as the national carriers to operate certain routes provided for in such agreements that name New York as a destination point in the United States. Pursuant to provisions of the Bermuda and Paris Agreements, British Airways and Air France have qualified before the aeronautical authorities of the United States, and have received from the CAB under Section 402 of the Federal Aviation Act, foreign air carrier permits authorizing them to engage in foreign air transportation between points in the United Kingdom and France, respectively, on the one hand, and points in the United States, including New York, on the other. The issuance of such permits and amendments thereto have been approved by the President pursuant to Section 801 of the Federal Aviation Act. Such permits contain no terms, conditions or limitations affecting the type of aircraft that

may be flown by British Airways and Air France in performing the authorized air transportation. Under such permits, British Airways and Air France for many years have served New York through JFK.

15. Certificates of airworthiness that satisfy the Bermuda and Paris Agreements and the Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591 (the "Chicago Convention"), have been issued by the civil aviation authorities of the United Kingdom and France for Concorde Aircraft. Since January 21, 1976, Concorde has been in the commercial service of British Airways and Air France.

16. On February 4, 1976, pursuant to and in implementation of the broad scheme of federal regulation outlined in paragraphs 11 to 13 of this Complaint, supra, and in specific response to applications filed by the plaintiffs seeking amendment of their operations specifications to name Concorde as a type of aircraft to be flown at JFK and Dulles, Secretary Coleman ordered a 16 month demonstration period, during which each plaintiff is permitted to conduct up to two Concorde flights per day into and out of JFK and one Concorde flight per day into and out of Dulles, under certain specified terms and conditions. The Secretary's Decision and Order expressly



directed the FAA Administrator to amend plaintiffs' operations specifications to permit plaintiffs to operate the Concorde aircraft at JFK and Dulles.

17. The Decision and Order of the Secretary was the culmination of an extensive process through which information was developed and views presented on all relevant factors relating to the proposed Concorde operations, including noise, air, quality, climate, the stratosphere, safety and other matters. Such information forming a basis for the Secretary's decision included:

(a) A draft environmental impact statement analyzing the likely environmental impact of the proposed operations at JFK and Dulles prepared by the FAA pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §4331 et seq., and released on March 3, 1975. This draft statement was sent to, among others, numerous New York and New Jersey officials, individuals and organizations, including the Governors of New York and New Jersey and the defendant Authority.

(b) A final environmental impact statement prepared after:

(i) public hearings on the draft environmental impact statement held in Washington, D.C., on April 14 and 15, 1975, in New York on April 18, 19

and 24, 1975, and in Sterling Park, Virginia, on April 21, 1975, including presentations by approximately 130 witnesses; and

(ii) the receipt of over 2900 written comments on the draft statement.

(c) A public hearing personally conducted by the Secretary on January 5, 1976, at which over 60 witnesses presented over seven hours of testimony.

(d) The receipt of over 50 additional written submissions or testimony provided in connection with the January 5, 1976, hearing, including data reporting vibration measurements taken from actual Concorde operations near Heathrow and Charles de Gaulle Airports.

(e) The development of an addendum to the final environmental impact statement, which together with the final statement and the Secretary's Decision and Order were filed with the Council on Environmental Quality on February 4, 1976.

18. The noise, air quality, safety and other issues specifically affecting Concorde operations at JFK were expressly considered in the Secretary's Decision and



Order and the final environmental impact statement and its addendum.

(a) The likely noise of Concorde operations specifications at JFK was considered in the Secretary's Decision and Order at pages 4, 42-50, and 58; in the final environmental impact statement at pages VI-97-100, VI-148-57, VI-184, X-35; and at pages 7 and 17 of the addendum. The Secretary concluded that the operation of the Concorde at JFK would increase the noise level "relatively little compared to the existing levels of noise exposure." (Decision and Order at 47.) The Secretary also concluded that vibration does not present any danger of structural damage and little possibility of annoyance. (Id. at 43.)

(b) The possible increases in air pollution from Concorde operations at JFK were specifically considered in the Secretary's Decision and Order at page 28; in the final environmental impact statement at pages VI-33-38, VI-103-06, VI-157-69, X-50; and at page 21 of the addendum. The Secretary concluded that the air quality impact at JFK would be minimal. (Decision and Order at 28.)

(c) The safety aspects of Concorde operations at JFK were considered in the Secretary's Decision and Order at pages I-4-5; and in the final environmental impact statement at pages IV-17-21, X-7, X-11, X-16 and in Appendix F. Among other things, the Secretary reviewed and concurred in the conclusions of the FAA Administrator (Decision and Order at II-6, II-15-22) that the Concorde can be operated safely in the air traffic control system, that the noise abatement maneuver by Concorde off Runway 31 Left at JFK is "quite safe," and that the FAA is "confident that the aircraft meets all relevant safety standards for supersonic aircraft flying today." (Decision and Order at I-4-5.)

19. Through federal statutes and regulations, the federal government has preempted the field of regulating the navigable air space and aircraft operations, and specifically regulation of the type of aircraft that may be permitted to land at international airports in the United States by foreign air carriers and regulation based on safety and noise considerations. Secretary Coleman's Decision and Order of February 4, 1976 is in direct implementation of the federal scheme of regulation described hereinabove. Any actions



or inactions by defendants having the effect of preventing, delaying or impeding Concorde operations by plaintiffs are, therefore, invalid under the Supremacy Clause, Article VI, Section 2, of the United States Constitution.

20. The regulation of foreign air carriers and the specific regulation of the type of aircraft that a foreign air carrier may utilize in scheduled commercial flights to a United States international airport relate to an area in which federal interests are so dominant and the need for exclusive federal supervision and national uniformity so compelling that any actions or inactions by defendants having the effect of preventing, delaying or impeding Concorde operations by plaintiffs at JFK are invalid under the Supremacy Clause.

21. The federal government, through the Secretary of Transportation, has expressly decided to authorize the Concorde aircraft to operate into and out of JFK. Any actions or inactions by defendants that have the effect of preventing, delaying or impeding the authorized Concorde operations are in direct conflict with federal action and are, therefore, invalid under the Supremacy Clause.

COUNT II

VIOLATIONS OF PLAINTIFFS' TREATY RIGHTS

22. Plaintiffs incorporate by reference paragraphs 4 through 21 of this Complaint.

23. The United Kingdom and the Republic of France are parties to aviation agreements with the United States. Three such agreements are pertinent here: the Bermuda Agreement between the United States and France, and the Chicago Convention, to which the United Kingdom, France and the United States are signatories.

24. The Bermuda Agreement creates obligations of the United States respecting the operation of air carriers such as British Airways that are designated by the United Kingdom. The Bermuda Agreement requires that British Airways be permitted to use JFK for international passenger, cargo and mail traffic and does not recognize limitations imposed by laws or regulations enacted or promulgated by the individual states, other political subdivisions or airport operators.

25. The Paris Agreement creates obligations of the United States respecting the operation of the air carriers such as Air France that are designated by France. The Paris Agreement requires that Air France be permitted to use JFK for international passenger, cargo and mail



traffic and does not recognize limitations imposed by laws or regulations enacted or promulgated by the individual states, other political subdivisions or airport operators.

26. The Chicago convention requires that every airport of a contracting state which is open to the public use by its national aircraft shall likewise be open under uniform conditions to the aircraft of all of the other contracting states, and that certificates of airworthiness issued by the contracting state in which the aircraft is registered shall be recognized as valid by other contracting states. JFK is an airport open to the public use by United States aircraft. The Concorde has been duly certified by the competent authorities of the United Kingdom and France as airworthy. The Chicago convention thus creates an international obligation, binding on the United States, to permit operations of the Concorde into and out of JFK by British Airways and Air France. The Chicago Convention does not recognize limitations on these rights imposed by laws or regulations enacted or promulgated by individual states, other political subdivisions or airport operators.

27. The International obligations of the United States reflected in the Bermuda and Paris Agreements and the Chicago Convention are also binding on the individual

states and their agencies, including the defendant Authority, under the Supremacy Clause of the United States Constitution, Article VI, Clause 8.

28. Any actions or inactions by defendants that have the effect of preventing, delaying or impeding Concorde operations by British Airways or Air France at JFK are inconsistent with treaties, international agreements and obligations of the United States and are, therefore, invalid under the Supremacy Clause of the Constitution.

### COUNT III

#### VIOLATION OF THE FEDERAL GOVERNMENT'S EXCLUSIVE AUTHORITY TO CONDUCT FOREIGN RELATIONS

29. Plaintiffs incorporate by reference paragraphs 4 through 28 of this Complaint.

30. The treatment afforded foreign air carriers by the defendants has a direct impact on the conduct of foreign relations by the United States. Frequently, as is the case with British Airways and Air France, foreign air carriers are operated by the governments of their respective countries. Discriminatory or unfair treatment of foreign air carriers in the United States would upset the balance of benefits flowing between the United Kingdom and France, on the one hand, and the United States on the other.



31. The Concorde program in particular is of major significance to the governments and peoples of the United Kingdom and France. The joint Anglo-French development and manufacturing effort began formally in 1961, and since then has involved an enormous commitment of money, manpower, national resources and pride by both governments. Some \$3 billion has thus far been expended on the program.

32. The national importance attached by the British and French to their planned Concorde operations to the United States was specifically recognized by Secretary of State Kissinger in his letter of October 9, 1975 to Secretary Coleman concerning the foreign policy implications of Secretary Coleman's decision on the applications of Air France and British Airways to fly the Concorde to JFK and Dulles:

"In terms of our political relations, we realize that this project, in which both governments have invested very large sums, represents a unique achievement by both Britain and France in a high technology aircraft that commands close attention at the highest levels in both countries, as well as intense public and governmental interest in view of the financial stake and national prestige involved in placing the Concorde into commercial service, and especially into transatlantic service.

"Under these circumstances, it is apparent that any Administration decision that would amount to an outright rejection of the applications of the two airlines for the limited service they intend to begin next year would be viewed as a serious blow by two of our closest friends and allies, whose interests coincide with our own in so many areas."

33. Any actions or inactions that prevent, delay or impede the implementation of duly-authorized Concorde landing rights to British or French flag air carriers have grave foreign policy implications for the United States. The operations of the United States flag carriers to and from the United Kingdom and France are of major importance to such carriers and depend upon reciprocal landing and take-off rights accorded to them by the governments of the United Kingdom and France by virtue of the principles of reciprocity and non-discrimination contained in the bilateral agreements and the Chicago Convention. In the case of traffic between the United States and the United Kingdom, for example, the figures for the period July 1, 1974 to June 30, 1975, show that 2,475,214 passengers were carried between the United States and the United Kingdom on scheduled flights, of which 57 percent of the total, were carried by United States flag carriers. During fiscal 1974-75, approximately 828,000 passengers were carried between the United States and France on scheduled flights, 48 percent of which were carried by United States flag carriers. In terms of numbers of flights, the reciprocal rights at issue are also of significance.

34. International considerations were an important factor considered by the Secretary of Transportation in his Decision and Order authorized limited Concorde operations at JFK and Dulles. Specifically, Secretary Coleman expressly



considered the following matters of international importance in reaching his determination authorizing Concorde operations at JFK and Dulles:

(a) The fact that "Concorde represents a 13-year commitment of almost three billion dollars by the British and French governments, who are among our closest allies and our best customers of United States goods. Prestige, economic vitality, and employment stability are at stake." (Decision and Order at 54.)

(b) The fact that "[s]ervice to the United States on the lucrative North Atlantic market was from the first a substantial element in the Concorde program, and denying the aircraft landing rights in this country could well abort the program." (Id.)

(c) The concern that a negative decision on the Concorde "might easily have been perceived as discriminatory for two reasons": first, that "the United States would be open to the charge that we treated our own aircraft more favorably than those of foreign countries in regulating aircraft noise," and second, that "the British and French might justifiably feel that the United States was discriminating in its attitude toward stratospheric pollution." (Id. at 54-55)

(d) The concern that "[a]part from appearance of discrimination, the British and French might perceive in a negative decision an unfair element of surprise, a defeat of justifiable reliance," since such a decision "might well be perceived by our allies as the imposition of a penalty for which they were not given notice." (Id. at 55-56.)

(e) The fact that "the British and French might well feel that the United States has taken advantage of the benefits of the relatively free and open international aviation structure while being unwilling to pay the costs . . . . In view of the history of United States dominance of the aviation industry, it would be quite remarkable if such a decision were not considered to be unfair." (Id. at 56.)

(f) The concern that a negative decision on the Concorde might be "attributed to an arbitrary and protectionist attitude of the United States out of fear that our dominance of the world aeronautical manufacturing market is threatened." (Id. at 61.)

35. These matters of international concern expressed by the Secretary and reflected in his Decision and Order were also reflected in the presentations made to the Secretary by



representatives of the British and French governments. In particular, the Honorable Gerald Kaufman, Minister of State for Industry of the United Kingdom, appeared at the January 5, 1976 hearing conducted by the Secretary and referred to "the importance which Her Majesty's Government attaches to the Concorde programme and in particular to the speedy and equitable resolution of services to the airports of Dulles and New York." At the same hearing, Monsieur Claude Abraham, Director of Air Transport in the French Civil Aviation Department, referred to "the great significance which France attaches to the application by Air France to begin Concorde service to the United States."

36. Any actions or inactions by the defendants to prevent, delay or impede plaintiffs' Concorde operations at JFK Airport constitute an intrusion by the defendants into areas directly affecting the foreign relations of the United States and are inconsistent with the federal government's exclusive authority in the foreign relations area and its express decision authorizing Concorde landings at JFK. Such actions or inactions are invalid as they represent a clear interference with the constitutional authority of the federal government to conduct United States foreign relations.

COUNT IV

UNCONSTITUTIONAL INTERFERENCE WITH  
FOREIGN AND INTERSTATE COMMERCE

37. Plaintiffs incorporate by reference paragraphs 4 through 36 of this Complaint.

38. Congress under the Constitution is granted exclusive authority to "regulate commerce with foreign nations, and among the several States." U.S. Const., Art. I, § 8 (the Commerce Clause). Congress has delegated the responsibility for regulating international aviation to the FAA, the Department of Transportation and the CAB and thereby delegated to these federal agencies the responsibility for regulating air commerce.

39. Secretary Coleman determined that the Concorde should be granted landing rights at JFK and Dulles because, among other things, Concorde flights would facilitate "international trade, commerce, and cultural exchange." (Decision and Order at 22.) Interference by the defendants with this Decision and Order is a clear intrusion into the regulation of international commerce, which has been entrusted exclusively to the federal government.

40. Any actions or inactions by defendants preventing, delaying or impeding the authorized Concorde operations at JFK -- the principal airport for transatlantic service in the United States and the major link with other air routes connecting with international flights -- would substantially impair international trade and commerce and the need for uniformity of regulation. Any such actions or inactions by the defendants



are, therefore, invalid as an impermissible interference with federal regulation in violation of the Commerce Clause.

WHEREFORE, plaintiffs pray:

1. That this Court declare invalid any action or inaction by the defendants intended to have or having the effect of preventing, delaying or impeding scheduled commercial services by plaintiffs, or either of them, with Concorde aircraft, into and out of John F. Kennedy International Airport as authorized by relevant international treaties and agreements, orders of the Civil Aeronautics Board and the President of the United States, and the Secretary of Transportation's Decision and Order of February 4, 1976;

2. That this Court enjoin the defendants and each of them, and their employees, agents, servants, and all other persons in active concert with them or any of them, from action or inaction by the defendants intended to have or having the effect of preventing, delaying or impeding, scheduled commercial service by plaintiffs, or either of them, with Concorde aircraft, into and out of John F. Kennedy International Airport as authorized by relevant international treaties and agreements, orders of the Civil Aeronautics Board and the President of the United States, and the Secretary of Transportation's Decision and Order of February 4, 1976.

3. That this Court grant such further relief as it considers just and proper.

4. That plaintiffs have and recover their costs of suit herein.

Dated: New York, New York  
March 17, 1976

WILLIAM C. CLARKE

ROGERS & WELLS

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245 Park Avenue  
New York, New York 10017  
(212) 983-3113

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A Member of the Firm  
200 Park Avenue  
(212) 972-7000

and

ATTORNEYS FOR AIR FRANCE

COVINGTON & BURLING

By \_\_\_\_\_

A Member of the Firm  
888 16th Street, N.W.  
Washington, D.C. 20006  
(202) 452-6000

ATTORNEYS FOR BRITISH AIRWAYS



THE HONORABLE  
WILLIAM J. RONAN, CHAIRMAN  
PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
ONE WORLD TRADE CENTER  
NEW YORK, NEW YORK 10048

DEAR DR. RONAN:

THIS IS TO ADVISE YOU THAT, PURSUANT TO THE DECISION AND ORDER OF THE SECRETARY OF TRANSPORTATION OF THE UNITED STATES, THE HONORABLE WILLIAM T. COLEMAN, JR., DATED FEBRUARY 4, 1976, BRITISH AIRWAYS AND AIR FRANCE INTEND TO SCHEDULE FLIGHTS OF THE CONCORDE INTO AND OUT OF JOHN F. KENNEDY INTERNATIONAL AIRPORT BEGINNING ON OR ABOUT APRIL 10, 1976 AND TO INITIATE TRAINING FLIGHTS NEXT WEEK.

IN OUR JUDGMENT THE DECISION AND ORDER CONSTITUTES A FEDERAL AUTHORIZATION TO OPERATE THE CONCORDE INTO AND OUT OF JOHN F. KENNEDY INTERNATIONAL AIRPORT IN ACCORDANCE WITH ITS TERMS AND CONDITIONS. OUR COUNSEL ADVISED THAT THE PORT AUTHORITY DOES NOT HAVE THE LEGAL RIGHT TO REFUSE TO ALLOW US TO OPERATE AT KENNEDY AIRPORT IN THE LIGHT OF THE PERMISSION WHICH HAS BEEN GRANTED BY THE FEDERAL GOVERNMENT. ADDITIONAL AUTHORITY TO OPERATE IS ALSO CONFERRED BY THE FOREIGN AIR CARRIER PERMITS ISSUED BY THE CIVIL AERONAUTICS BOARD, APPROVED BY THE PRESIDENT, AUTHORIZING FLIGHTS TO NEW YORK, THE INTERNATIONAL TREATIES AND AGREEMENTS IN FORCE BETWEEN THE UNITED STATES ON THE ONE HAND AND BRITAIN AND FRANCE ON THE OTHER, AND VARIOUS FEDERAL STATUTES AND CONSTITUTIONAL PROVISIONS.

EXHIBIT A

A 33

OUR PERSONNEL WILL BE IN TOUCH WITH YOUR STAFF SHORTLY  
TO PLAN THE OPERATIONAL ARRANGEMENTS INVOLVED IN THE INITIATION  
OF SERVICE.

SINCERELY,

AIR FRANCE

CLAUDE LALANNE

SENIOR VICE PRESIDENT

NORTH AND CENTRAL AMERICA

BRITISH AIRWAYS

GORDON DAVIDSON

CONCORDE DIRECTOR

OVERSEAS DIVISION

A 34



March 12, 1976

Dear Mr. Lalanne:

This will acknowledge receipt of your letter which we received by Telex on March 11, 1976.

On the same date, the Board of Commissioners of the Port Authority unanimously adopted the attached resolution which denies permission for supersonic transport operations at John F. Kennedy International Airport pending further action by the Board after it receives a report evaluating supersonic operations experience over a six-month period at Dulles International, Heathrow and DeGaulle Airports.

There is, therefore, no need for your personnel to contact our staff for the purpose you stated in your letter, to plan operational arrangements for scheduled Concorde service at Kennedy beginning on or about April 10, 1976 and for training flights next week by the Concorde at Kennedy International Airport.

Sincerely yours,

William J. Ronan  
Chairman

attach.

Mr. Claude Lalanne  
Senior Vice President  
Air France  
1350 Avenue of the Americas  
New York, New York 10019

Telex copy to Gordon Davidson, British Airways

EXHIBIT B

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## Kennedy International Airport-Concorde Operations

The Executive Director recalled to the Board that on July 12, 1951 the Committee on Operations had adopted a Port Authority air terminal regulation providing that no jet aircraft may land or take off at a Port Authority air terminal without permission. This rule reflected the Authority's concern that noise from jet-powered aircraft would prove far more annoying to airport neighbors than that produced by piston aircraft.

Subsequently, Port Authority acoustics consultants developed a method for measuring a listener's reaction to this new aircraft noise, the perceived noise decibel, and from 1958 to the present time, the Committee on Operations has used the PNdB to establish the Terms and Conditions governing jet operations at Port Authority airports.

The Port Authority's present jet Terms and Conditions at Kennedy International Airport require that takeoffs by jet aircraft be so planned and conducted that the noise level of 112 PNdB as measured on the ground in the neighboring communities will not be exceeded. Jet aircraft must also make over-water takeoffs during nighttime hours. The aviation industry, responding to the aircraft noise problem, has in recent years introduced jet aircraft that are quieter than their predecessors with one exception, the supersonic transport.

A 36



Airport operators and airport neighbors have therefore been apprehensive about the addition of noisier air transports to the civil aviation fleet - the airport neighbors because of the possible adverse effect such transports will have on their environment and the airport operators for the additional reason that the courts have imposed on them, and not on the Federal Government or the air carriers, financial liability for damages (takings) to neighboring property caused by the noise of low flying aircraft operating at public airports.

The Executive Director reviewed with the Board both the Federal Aviation Administration's final environmental impact statement relating to the request by British Airways and Air France for an amendment to their operations specifications to permit these carriers to fly the supersonic Concorde aircraft in limited commercial service at Kennedy International and Dulles international Airports and the February 4, 1976 decision of the Secretary of Transportation of the United States, William T. Coleman, Jr., directing the FAA to issue provisional amendments to such operations specifications. The restrictive amendments, which the Secretary justified on the basis of the Concorde's significantly different environmental characteristics, will permit each airline to conduct during daylight hours up to two Concorde flights per day into Kennedy and one Concorde

flight per day into Dulles, for a period of no longer than 16 months from the commencement of commercial service, subject to revocation at any time upon four months' notice or immediately in the event of an emergency being harmful to the health, welfare or safety of the American people.

At the direction of the Governor of New York, New York State's Commissioners of Transportation and Environmental Protection, Raymond Schuler and Ogden Reid, appeared before the February 25, 1976 meeting of the Operations Committee to express in detail the State's reasons for recommending that the Concorde be denied permission to use Kennedy International Airport. Excessive noise was identified by them as the principal objection to the Concorde. In addition, the Legislature of the State of New York has passed and the governor has signed, proposed legislation that would mandate the Port Authority to deny permission to such aircraft to use Kennedy International Airport. Concurrent proposed legislation is pending in New Jersey.

Although it is claimed that the Concorde would meet the Port Authority's 112 PNdB standard by executing a low altitude turn shortly after take-off, the environmental impact statement and the Secretary's decision raise a number of significant questions concerning the effect of low frequency noise and vibrations generated by the Concorde and the airplane's overall impact on the noise environment in the area



surrounding Kennedy. As Secretary Coleman points out, the Concorde's individual noise events will disturb more airport neighbors than the comparable range subsonic aircraft. The area exposed by the Concorde's take-off noise levels will be 47.6 square miles, approximately 6 times that exposed by the Boeing 707 and 15 times that by the Boeing 747. On landing, the area exposed by the Concorde, 11.1 square miles, will be approximately 5 times that exposed by the Boeing 707 and 20 times that by the Boeing 747. In addition, the Concorde engines generate low frequency energy and, consequently, induce higher levels of noise and structural vibrations in homes and other structures than do subsonic aircraft. The unique noise characteristics of the Concorde and the expected aggravated community response to this noise add new and serious dimensions to the present aircraft noise problem, one not necessarily reflected in the Port Authority's current noise standard.

Secretary Coleman has therefore concluded that the subjective characteristics of noise response to the Concorde "may best be evaluated through a controlled demonstration period sufficient length to enable an assessment, after the initial publicity has subsided, of community reaction to Concorde noise." He has therefore directed the FAA, the proprietor of Dulles International Airport, to permit the Concorde to operate at that airport. At Dulles, a facility double the size of Kennedy, less than 1,000 residents will be included

within the noise exposure forecast 30 noise impact contour and none within the NEF 40 severe noise impact area. However, according to the environmental impact statement there are 485,000 persons within the NEF 30 contour at Kennedy and 112,000 within the NEF 40 contour. It does not appear to be in the public interest to test the subjective characteristics of noise response to the Concorde in the densely populated areas around Kennedy International Airport. In this regard it was noted that the Secretary had expressed the opinion that the elimination of Kennedy International Airport "would greatly diminish, but. . . would not destroy, the validity of the demonstration." It is clear from the foregoing that a test at Dulles is clearly preferable as the actual performance and environmental results could be monitored without impacting so large a residential population. It is accordingly recommended that the Port Authority defer any action to permit supersonic aircraft, including the Concorde, from operating at Port Authority air terminals for a period not to exceed 6 months following this commencement of regular commercial operation of the Concorde at Dulles Airport.

It is further recommended that the Director of Aviation analyze the Concorde flights at Dulles, Heathrow and De Gaulle Airports and the communities' reaction thereto, and study the results of the Department of Transportation's mandated monitoring

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program for such six month period, and, if necessary, request the FAA to modify its program in order to provide the Port Authority with required data, or otherwise secure data, which would enable the Port Authority to apply this information to communities surrounding Kennedy International Airport.

In addition, the liability of the Port Authority for any claims for damages arising out of the Federally mandated operation of such aircraft requires a most thorough-going review and it is directed that General Counsel proceed to research and study the question, to contact the appropriate Federal agencies for possible liability coverage and to assess the airline operator's responsibility as well.

Whereupon, the following resolution was unanimously adopted:

RESOLVED, that the Port Authority deny permission to operate any supersonic aircraft, including the Concorde, at Kennedy International Airport, until after at least six months of operating experience has been evaluated, after a report on such experience has been made to the Board and pending further action thereon by the Board, and it is further

RESOLVED, that the Director of Aviation is directed to analyze Concorde flights for a period of six months at Dulles International Airport and also at Heathrow and DeGaulle Airports, the community reaction thereto, the results of the Department of Transportation mandated monitoring program at Dulles, and, if necessary, request the Federal Aviation Administration to modify such program, or otherwise to secure additional information concerning the Concorde's noise and other environmental characteristics; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized to retain such number of consultants in connection with the foregoing study as he may deem advisable; and it is further

RESOLVED, that the Executive Director and the Director of Aviation be and they hereby are directed at the end of the foregoing six month program, based upon analysis of noise data and community reaction thereto, to make a recommendation to the Commissioners as to the acceptability of supersonic operations at Kennedy International Airport.

Whereupon, the meeting was adjourned.

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Secretary

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

BRITISH AIRWAYS BOARD and  
COMPAGNIE NATIONALE AIR FRANCE,

Plaintiffs,

- against -

ANSWER

THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY and WILLIAM J. RONAN,  
W. PAUL STILLMAN, JAMES G. HELLMUTH,  
VICTOR R. YANITELLI, ANDREW C. AXTELL,  
GEORGE F. BERLINGER, MILTON A GILBERT,  
ROBERT R. DOUGLASS, JAMES C. KELLOGG, III,  
GUSTAVE L. LEVY, MATTHEW NIMETZ,  
ALAN SAGNER,

76 Civ. 1276

Assigned to  
Judge Milton Pollack

Defendants.

-----X

Defendants, The Port Authority of New York and New Jersey  
(hereinafter referred to as the "Authority"), and the individual  
defendants above-named, by their attorney PATRICK J. FALVEY, answering  
the Complaint herein, show to this Court and allege:

I. Deny each and every allegation set forth in paragraph  
"1" of the Complaint except admit that this purports to be a suit  
for declaratory and injunctive relief brought by plaintiffs on the  
bases set forth therein.

II. Admit each and every allegation set forth in paragraphs  
"2", "3", "5", "7", "8" and "15" of the Complaint.

III. Admit each and every allegation set forth in paragraph  
"4" of the Complaint, except respectfully refer the Court to the  
various statutes, agreements, orders, rules, specifications and  
decisions mentioned therein.

IV. Admit each and every allegation set forth in paragraph "6" of the Complaint, except respectfully refer the Court to the publications of the Department of Transportation, United States of America, "The Secretary's Decision on Concorde Supersonic Transport," dated Washington, D. C., February 4, 1976, a copy of which was filed with the Court by plaintiffs, and "Statement of Secretary of Transportation William T. Coleman, Jr., Regarding the Port of New York and New Jersey's Resolution Banning Concorde Flights into JFK Until There Have Been Six Months of Such Flights at Dulles," a copy of which is attached hereto and designated defendants' Exhibit 1.

V. Deny each and every allegation set forth in paragraph "9" of the Complaint, except admit that by resolution dated March 11, 1976 and attached to the Complaint as Exhibit B, the defendant Authority denied permission to operate any supersonic aircraft, including the Concorde, into or out of JFK and respectfully refer the Court to such resolution for the terms, provisions and grounds thereof.

VI. Deny each and every allegation set forth in paragraph "11" of the Complaint, except admit that Secretary Coleman issued a Decision and a Statement referred to in paragraph "IV" hereof and respectfully refer the Court to the said documents and further respectfully pray that this Court take judicial notice of the various statutes set forth in that paragraph of the Complaint.



VII. Deny each and every allegation set forth in paragraph "12" of the Complaint, except respectfully pray that this Court take judicial notice of the various statutes and regulations set forth in that paragraph of the Complaint.

VIII. Admit each and every allegation set forth in paragraph "13" of the Complaint, except deny that the Federal government has developed a broad and comprehensive scheme to control and regulate aircraft noise levels and further deny that pursuant to the Noise Control Act of 1972 the FAA Administrator has pursued a broad federal regulatory program to control and abate aircraft noise.

IX. Admit each and every allegation set forth in paragraph "14" of the Complaint, except deny the allegation that "Such permits contain no terms, conditions or limitations affecting the type of aircraft that may be flown by British Airways and Air France in performing the authorized air transportation."

X. Deny each and every allegation set forth in paragraph "16" of the Complaint, except admit that in response to applications filed by plaintiffs, Secretary Coleman's Decision and Order was issued and the Court is respectfully referred to the said Decision and Order for the terms and provisions thereof.

XI. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "17" and "18" of the Complaint, except respectfully refer to the Secretary's Decision and Order for a discussion of the relevant factors considered by him in reaching his Decision and Order and his findings thereon.

XII. Deny each and every allegation set forth in paragraphs "19", "20" and "21" of the Complaint, except respectfully refer all questions of law to this Court.

XIII. Deny each and every allegation set forth in paragraph "23" of the Complaint, except admit that the United Kingdom and the Republic of France are parties to various aviation agreements with the United States.

XIV. Deny each and every allegation set forth in paragraphs "24", "25", "26" and "27" of the Complaint, except respectfully refer this Court to the Bermuda and Paris Agreements and the Chicago Convention for the terms thereof and admit that JFK is an airport open to public use by United States aircraft and the Concorde has been duly certified by the competent authorities of the United Kingdom and France as airworthy.

XV. Deny each and every allegation set forth in paragraph "28" of the Complaint, except respectfully refer all questions of law to this Court.

XVI. Allege that they are without knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "30" of the Complaint, except deny that any treatment afforded foreign air carriers by the defendants has a direct impact on the conduct of foreign relations by the United States and admit that British Airways and Air France are operated by the Governments of their respective countries.



XVII. Allege that they are without knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "31", "32" and "33" of the Complaint, except deny that any actions or inactions on the part of these answering defendants would have "grave foreign policy implications for the United States" as alleged.

XVIII. Deny each and every allegation set forth in paragraph "34" of the Complaint, except admit that Secretary of Transportation Coleman considered international obligations, international dimension and international relations, among other matters, and respectfully refer the Court to the said Decision and Order and the contents thereof.

XIX. Allege that they are without knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "35" of the Complaint.


XX. Deny each and every allegation set forth in paragraph "36" of the Complaint.

XXI. Deny each and every allegation set forth in paragraphs "38" and "40" of the Complaint, except respectfully refer all questions of law to this Court.

XXII. Deny each and every allegation set forth in paragraph "39" of the Complaint, except respectfully refer this Court to the Decision and Statement of Secretary Coleman referred to in paragraph IV herein,

WHEREFORE, Defendants pray that this Complaint be  
dismissed together with the costs and disbursements of this action.

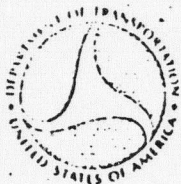
Dated: New York, N. Y.  
April 5, 1976

A handwritten signature in cursive script, reading "Patrick Falvey", is written over a horizontal line.

PATRICK J. FALVEY  
Attorney for Defendants  
Office & P. O. Address  
One World Trade Center  
New York, New York 10048

Tel: (212) 466-7698





DEPARTMENT OF  
TRANSPORTATION

NEWS

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20590

FOR IMMEDIATE RELEASE  
March 24, 1976

DOT R-11-76  
Phone: (202) 426-4321

STATEMENT OF SECRETARY OF TRANSPORTATION WILLIAM T. COLEMAN, JR., REGARDING  
THE PORT OF NEW YORK AND NEW JERSEY'S RESOLUTION BANNING CONCORDE FLIGHTS  
INTO JFK UNTIL THERE HAVE BEEN SIX MONTHS OF SUCH FLIGHTS AT DULLES.

Because of numerous inquiries about his position on the resolution  
of the Port Authority of New York and New Jersey to postpone a decision  
whether to admit the Concorde until after six months of the  
demonstration at Dulles, the Secretary has made the following statement:

I am disappointed by the Port Authority's resolution. The  
demonstration of the Concorde would be much more meaningful if it  
were to take place simultaneously at both JFK and Dulles. Because  
substantially more people live in the area of JFK Airport and because  
many transatlantic passengers originate or terminate their flights  
in New York, the JFK portion of the demonstration is important to  
the various analyses I indicated were needed before we could be in a  
position to make the most responsible final decision about whether  
to admit the Concorde into U.S. airports. Thus the demonstration at  
JFK is in the overall national interest. I also believe the unique  
interests of the citizens of New York are adequately protected by the  
strict limitation on the number of flights, the close monitoring of  
aircraft by the FAA in conjunction with other federal agencies and  
the safeguard that would allow immediate termination in the event  
of an emergency deemed harmful to the public health. I might add  
that it seems to me it is also in the interest of New York as the major  
commercial center on the east coast to participate in the demonstration  
of a new technology that could be a significant benefit to international  
commerce. If New York does not participate it runs the risk that  
it will not maintain its position as the major airport for international  
travel to Europe.

- more -

EXHIBIT T

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BEST COPY AVAILABLE

In my decision of February 4, however, I indicated that if "for any legitimate and legally binding reason" it should turn out that the JFK part of the demonstration could not go forward, that would not destroy, although it obviously would greatly diminish, the validity of the demonstration. This statement was made in recognition of the fact that under federal policy that has hitherto prevailed a local airport proprietor has had authority under certain circumstances to refuse landing rights. For the present this remains the policy of the department.

The 16 month period will not begin, so far as the JFK part of the demonstration is concerned, until the first scheduled Concorde flight (of either airline) lands at or takes off from that airport. The Port Authority's resolution may therefore have the effect of significantly delaying a final decision on the vexing issue of whether the Concorde should be finally admitted.

In the event, however, that the proprietors of JFK persist in their apparent decision not to participate in the demonstration until there have been six months of demonstration flights at Dulles and in the further event that this decision is upheld in court, we will welcome the participation of JFK at the conclusion of that six months delay. It is in any event in the national interest to begin as much of the demonstration as possible as soon as possible, in order that a final decision that will be fair to the American people and the other parties concerned will not be inordinately delayed.

# # #



BRITISH AIRWAYS BOARD AND  
CAMPAGNIE NATIONALE AIR FRANCE,

v.

76 Civ. 1276

(Judge Milton  
Pollack)

Rule 24(a)(2)  
and (b)(2) FRCP

TOWN OF HEMPSTEAD, INCORPORATED  
VILLAGE OF LAWRENCE, INCORPORATED  
VILLAGE OF CEDARHURST, INCORPORATED  
VILLAGE OF ATLANTIC BEACH,  
ROBERT F. CHECK, MONA GOTTESMAN AND  
HERBERT WARSHAVSKY,

Applicants for Intervention.

The Town of Hempstead, Incorporated Village of Lawrence,  
Incorporated Village of Cedarhurst, Incorporated Village of  
Atlantic Beach, Robert F. Check, Mona Gottesman and Herbert  
Warshavsky, separately and severally, move for leave to inter-

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vene as parties defendant in this action pursuant to the provisions of Rule 24(a)(2) or in the alternative, pursuant to the provisions of Rule 24(b)(2) of the Federal Rules of Civil Procedure, in order to assert the defenses set forth in their proposed answer, a copy of which is attached hereto, and for grounds of said motion, separately and severally assign the following:

The Applicants For Intervention

1. The Town of Hempstead (hereinafter referred to as Town) is a municipal corporation situated in Nassau county, State of New York with executive offices at Town Hall, Hempstead, New York. Said Town's western boundry is coextensive with the south-western boundry of Nassau County and contiguous with the boundry of Queens county, New York. Said Town lies east of John F. Kennedy International Airport (hereinafter referred to as JFK) and comprises 128 square miles in area and has a population of approximately 850,000 inhabitants.

a. The western boundry of said Town extends farther north and farther south than the eastern boundry of JFK, and the easterly end of runway 31L at JFK is located approximately 1300 feet from said Western boundry of said Town.

b. The population density in the area of said Town nearest JFK is approximately 10,000 persons per square



mile, and there are approximately 138,000 persons living in the incorporated villages and in the unincorporated area of said Town within a four mile radius of JFK.

c. There are several thousand residents of said Town living in the flight path of aircraft using runway 31L at JFK. (Affidavits of Robert F. Check, Mona Gottesman and Herbert Warshavsky, attached hereto and made a part of this Motion).

d. Said Town maintains and owns various parks and recreational facilities for use by residents and non-residents and from which use said Town derives substantial revenue, and levies and collects advalorem property and other business taxes on properties within its borders, which revenue is essential and used by said Town in administering said Town government (Affidavit of Warshavsky).

e. The proximity of some of said recreational facilities and properties located within the boundaries of said Town is such that noise originating from aircraft using JFK is readily transmitted to said facilities and properties and is ascertainable by persons using said facilities and properties. (Affidavits of Herbert Warshavsky and Robert F. Check).

2. The Incorporated Village of Lawrence is a municipal corporation, a body corporate and politic, located in the south west corner of the Town of Hempstead, County of Nassau, State of New York with Village Offices at 196 Central Avenue, Lawrence, New York 11559.

a. Said Village of Lawrence has approximately 6900 residents living in homes located within its territorial boundries encompassing approximately 4.5 square miles, and the Northwestern boundry of said Village is approximately 8000 feet from the end of runway 31L at JFK and within the flight path of aircraft using said runway. (Check and Warshavsky Affidavits).

b. Said Village is the owner and operator of recreational facilities consisting of an eighteen hole golf course, which is utilized by persons who are charged fees for using such course, a marina of 110 slips occupied by lessee - boat owners, who pay substantial fees to said Village for the rental of said slips, and seven tennis courts used by persons that are charged fees received by said Village for the use of said tennis courts (Warshavsky Affidavit).

c. The income received by said Village for the use of said facilities is substantial being in excess of \$500,000 per year (Warshavsky Affidavit).



d. The Incorporated Village of Lawrence levies and collects an advalorem property tax on the residences and other real property located within its boundaries, which tax revenues are substantial in amount and are used in and essential to the administration of said Village government (Warshavsky Affidavit).

e. The proximity of said recreational facilities and properties located within the boundaries of said Village is such that noise originating from aircraft using JFK is readily transmitted to said facilities and properties and is ascertainable by persons using said facilities and properties (Check and Warshavsky Affidavits).

3. The Incorporated Village of Cedarhurst is a municipal corporation, a body corporate and politic, located contiguous to the Incorporated Village of Lawrence and slightly north thereof in the Town of Hempstead, County of Nassau, State of New York with Village offices located at 200 Cedarhurst Avenue, Cedarhurst, New York.

a. Said Village of Cedarhurst has approximately 7100 residents residing in residences located within its territorial boundaries encompassing approximately one square mile and a boundry of said Village of Cedarhurst is located within 4000 feet of runways at JFK and within the flight path of aircraft using said runways. (Gottesman Affidavit).

b. Said Village of Cedarhurst levies and collects an advalorem property tax on the residences and business properties located within its boundaries, which tax revenues are substantial in amount and are essential to the administration of said Village government.

c. The proximity of said properties located within the boundaries of said Village is such that noise generated by aircraft using JFK is readily transmitted to said properties and is readily ascertainable by persons using said properties. (Check, Gottesman and Warshavsky Affidavits).

4. The Incorporated Village of Atlantic Beach is a municipal corporation, a body corporate and politic, located on the southern boundry of the Town of Hempstead and within it, County of Nassau, State of New York with Village offices located at 65, The Plaza, Atlantic Beach, New York.

a. Said Village of Atlantic Beach has approximately 1675 residents living in homes located within its territorial boundries encompassing approximately one square mile, and has its northwestern boundry within approximately 14,000 feet of runway 31L at JFK and within the flight path of aircraft using said runway.



b. Said Village of Atlantic Beach levies and collects an advalorem property tax on the residences and business properties located within its boundaries, which tax revenues are substantial in amount and are essential to the administration of said Village government (Warshavsky Affidavit).

c. The proximity of said properties located within the boundaries of said Village is such that noise generated by aircraft using JFK is readily transmitted to said properties and is readily ascertainable by persons using said properties. (Check and Warshavsky Affidavits).

5. Robert F. Check, resides at 57 Cedar Road in Inwood, which is an unincorporated area of the Town of Hempstead and located in the Southwesterly portion of said Town in Nassau County and is contiguous with the Western border of said Town which is adjacent to the County of Queens in the State of New York. (Check Affidavit).

a. Said Check owns his own residence which is valued at \$50,000 and has so owned and lived therein at said address for the last 20 years. (Check Affidavit).

b. Said Check residence is located approximately 5,000 feet from runway 31L at JFK and within the flight path of aircraft using said runway. (Check Affidavit).

c. Said Check has a family consisting of a wife and two children of ages 22 and 18 who attended the public schools in Inwood and Lawrence. (Check Affidavit).

d. The proximity of said Check, his family, and residence to JFK is such that noise generated at JFK by aircraft using said airport is readily transmitted to his residence and is ascertainable by persons occupying said home. (Check Affidavit).

5.1. Herbert Warshavsky, resides at 22 Meadow Lane in the Incorporated Village of Lawrence, New York (Warshavsky Affidavit).

a. Said Warshavsky owns his own home which is valued on the open market at about \$65,000, and has so owned and lived therein at said address for the last twenty-six years. (Warshavsky Affidavit).

b. Said residence of Warshavsky is located at approximately 9500 feet from the end of runway 31L at JFK and within the flight path of aircraft using said runwa-. (Warshavsky Affidavit).

c. Said Warshavsky lives with his wife at said address, and the proximity of said residence to JFK is such that the noise generated at JFK by aircraft using said airport is readily transmitted to his residence and is readily



ascertainable by persons occupying said home (Warshavsky Affidavit).

5.2 Mona Gottesman resides at 430 Arbuckle Avenue, in the Incorporated Village of Cedarhurst, New York (Gottesman Affidavit).

a. Said Gottesman has resided at said address since September 1973, at which time said Gottesman purchased said home. Its value on the open market is approximately \$55,000. (Gottesman Affidavit).

b. Said residence is within the flight path of aircraft using runways at JFK and is approximately 5000 feet from the eastern end of said runways. (Gottesman Affidavit).

c. Said residence is occupied by said Gottesman's family consisting of her husband and two young sons age 11 and 9 years (Gottesman Affidavit).

d. The proximity of said Gottesman, her family, and residence to JFK is such that noise generated at JFK by aircraft using said airport is readily ascertainable by persons occupying said home (Gottesman Affidavit).

#### The Threatened Injury

6. The Concorde is an aircraft of British-French design and manufactured to travel at supersonic speeds; upon in-

formation and belief the plaintiff's have applied to the defendants for permission to use the facilities, including runway 31L, at JFK for operating said Concorde in commercial flights between JFK and Heathrow Airport in England and said JFK and Charles De Gaulle airport in France.

7. Upon information and belief the noise generated by said Concorde on take off exceeds 136 EPNdB. Under similar conditions of measurement of noise, upon information and belief, the loudest jet (707) aircraft engaged in commercial operations in the United States will generate approximately 107 EPNdB.

8. Upon information and belief, the difference in intensity of noise generated by the Concorde and by the noisest jet, 707, is represented by 29 EPNdB measured logarithmically; for every increase of 10 EPNdB the intensity at 117 EPNdB is 100% greater than at 107 EPNdB, and at the measurement of 127 EPNdB the intensity is 100% greater than at 117EPDNdB; so that at 127 EPNdB the noise is 4 times as severe and intense as at 107 EPNdB. At 137 EPNdB the noise is 8 times as severe and intense as at 107 EPNdB. (Affidavit of Check).



9. Upon information and belief the noise generated and the emission of pollutants by the Concorde are so severe and intense that in utilizing the facilities at JFK and particularly runway 31L, such noise and pollutants will proximately cause residents of applicants, including, but not limited to Robert F. Check, Mona Gottesman and Herbert Warshavsky, and other applicants to suffer injury to their person and damage to their property in that; said noise can and will cause shock and severe stress to the nervous systems of persons residing in said areas and using the recreational facilities of said applicants thereby rendering the same unusable with the loss of revenue to applicants; and will cause residences belonging to inhabitants of each applicant to become uninhabitable and incapable of a comparable valuable use; land values will be substantially reduced and so will the tax revenues of said applicants; businesses will lose their custom and be forced to leave their present locations with a further loss of revenue to applicants; said noise will further cause the disruption of communication between residents of applicants, normal conversation and communication will become impossible; nervousness and apprehension will replace sleep and repose; the normal use and reasonable enjoyment of homes will be precluded; the health, habits and material comforts will be injuriously affected; the low

frequency energy of some of the components of said noise will cause serious vibrations, equivalent to some earthquakes, to be impacted upon the person and property of those residents of applicants including but not limited to Robert F. Check, Mona Gottesman, and Herbert Warshavsky, said vibrations are capable of and will cause damage to structures internally and externally, as well as additional nervousness and apprehension producing profound and intolerable discomfort to the residents of applicants including but not limited to Robert F. Check, Mona Gottesman and Herbert Warshavsky; and will adversely impact the quality of life and environment of applicants. (Affidavits of Herbert Warshavsky and Robert F. Check).

10. All of the aforesaid injury and damage to applicants is present, immediate and impending and will proximately result from plaintiff's operation of Concorde aircraft at JFK in a surrounding community already heavily impacted by the noise associated with airport operations (Check and Warshavsky Affidavits).

11. The defendant's, in the exercise of their rights as the lessee-operator of JFK, have the authority and power of the proprietor of JFK to set terms and conditions concerning aircraft utilizing the facilities and runways of JFK. Pursuant



to that authority and power of the proprietor of JFK said defendant, on July 12, 1951, established as a term and condition that no jet aircraft may land or take off at JFK without permission of the defendants, and that since 1958, such take offs by jet aircraft be so planned that the noise level of 112 PNdB as measured on the ground in neighboring communities will not be exceeded. Said level applies to all jets using JFK and is for the benefit of the applicants.

12. Pursuant to the exercise of their authority as an airport proprietor-operator said defendant's have declined to permit the plaintiffs to use the facilities and runway at JFK until after at least six months of operating experience of said Concorde at Dulles Internawional Airport and at Heathrow and De Gaulle airports has been evaluated in relating to the Concorde's noise and other environmental characteristics.

Interest Claimed By Applicants

13. Applicants have the right to be free from said present, immediate and impending injury and damage to (a) the existing quality of life and environment of applicants, (b) to the person and property of their residents as well as to (c) the proprietary rights of applicants in their own corporate properties, and including but not limited to the

injuries and damages to the applicants Check, Gottesman and Warshavsky, to their person and property, all of said injuries and damages are presently threatened and will be proximately caused by the illegal use of JFK by the Concorde aircraft illegally operated by the plaintiffs (Affidavits of Check and Warshavsky).

14. As a direct result of the threatened illegal conduct of the plaintiffs in using the facilities of JFK in the illegal operation of Concorde aircraft, thousands of residents of applicants including but not limited to Check, Gottesman and Warshavsky, will be subjected to an unhealthy and unreasonably increased noise and air pollution including the emission of carbon monoxide, nitrogen oxide and hydrocarbons, as well as to an unreasonably increased probability of aviation accident and injury to their person and property. (Check, Gottesman and Warshavsky Affidavits).

15. The interest of applicants in preventing said injuries and damages and adverse environmental impact on and to the residents of applicants, as well as to applicants, including but not limited to Check, Gottesman and Warshavsky, is inextricably involved in and affected by the determinations this Honorable Court will be called upon to make in the pending



case concerning the power and right of the defendants over the use of their runways and facilities at JFK as well as the nature of the defendants' <sup>conduct</sup> exercised in behalf of and for the benefit of applicants, as an unreasonable burden upon interstate and foreign commerce.

16. A decision adverse to the defendants that would permit plaintiffs' use of the runways and facilities at JFK for the operation of the Concorde aircraft by plaintiffs will directly cause applicants substantial injury to the person of their residents including but not limited to the applicants Check, Gottesman and Warshavsky, as well as damage to the property of applicants as more specifically set forth above.

The Applicants May Be Impeded In  
Protecting Their Interest By This  
Court's Disposition Of The Pending  
Suit

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17. Any disposition of the pending cause by this Court adverse to the defendants will impair and impede the applicants in protecting their rights to be free from said adverse environmental impact and from said injuries and said damages to the person and properties of the residents of said applicants and to said applicants including but not limited to applicants Check, Gottesman and Warshavsky; in addition such disposition

could operate as stare decisis setting a precedent on a new issue, difficult to overcome in any later actions brought by applicants against either one or both of the two plaintiffs, or against the defendants for claims based upon the illegal operation by the plaintiffs of the Concorde aircraft at JFK.

The Interests of the Applicants  
May Not Be Adequately Represented  
By The Defendants

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18. Injuries and damages to the defendants arise primarily from their liability as operators of an airport for their failure to avoid injuring those property owners and residents of applicants, applicants, including but not limited to applicants Check, Gottesman and Warshavsky, residing near JFK. The plaintiffs and defendants are potential party defendants in litigation of claims by applicants arising out of said operation of the Concorde aircraft by the plaintiffs. It is to the advantage of the defendants to minimize the effect of the operation of the Concorde on the applicants.

19. Naturally, the defendants would be content to obtain any type of decision from this Court that will give them immunity from liability or from legal responsibility to residents of applicants, applicants, including but not limited to applicant Check, arising from the operation of the Concorde



aircraft at JFK.

19.1. The defendants have traditionally been opposed to the efforts of applicants to obtain relief from the aircraft noise including two injunctive actions brought in the United States District Court for the Eastern District of New York 272 F. Supp. 226 and 132 F. Supp. 871. In each instance the defendants supported the position of their tenants, the airline operators.

19.2. The applicants are in a better position to make proof of the injuries and damages that will be proximately caused by operation of the Concorde than the defendants. The defendants must be constrained by the fact that it is to the interest of the defendants to show little or no damage proximately caused to applicants by operating the Concorde.

20. The existence of such an adverse interest between the defendants and the applicants is a compelling reason for applicants to seek the aid of this Honorable Court through intervention to protect applicants' interest in the pending litigation between the plaintiffs and the defendants. Such adverse interests of the defendants may result in inadequate representation of the interest of applicants (Affidavits of Check and Warshavsky).

21. The proposed answer of the applicants clearly discloses that there are common questions of fact and law between the issues raised by the present pleadings and said proposed answer.

In addition to the general denial (also the pleading of the defendants), the applicants defenses raise issues of estoppel; the local nature of the problem met by the Terms and Conditions imposed by the defendants as airport proprietors which will negate the existence of an unreasonable burden upon interstate and foreign commerce; the extent of alleged federal preemption; and the balance of considerations in determining an unlawful interference by the Terms and Conditions with the foreign relations of the United States.

22. In addition, in any action to prevent or recover for injuries and damages to applicants proximately resulting from the operation of the Concorde aircraft at JFK by the plaintiffs will be questions of the nature and extent of such injuries, and of the legal liability of the owner or operator of the airport to said applicants. Inherent in this question are such considerations and issues as the extent of the doctrine of preemption, supremacy, and unreasonable burdens upon interstate and foreign commerce, and unreasonable interference with the foreign relations of the federal government.

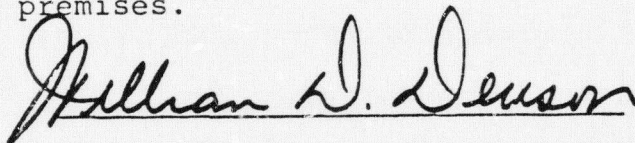


23. In like manner in comparable actions against the plaintiffs, the operators of the Concorde aircraft, similar questions will arise as in actions against the airport operators.

24. All of these questions are presented in the proposed answer submitted by the applicants for intervention in this proceeding as well as in the answer, in some respects but not all respects, filed by the defendants in this proceeding.

WHEREFORE applicants pray that this motion be granted and that this Honorable Court enter an order:

1. Authorizing the intervention of said applicants as parties defendant, and
2. Permitting the filing of the attached answer to the complaint of the plaintiffs.
3. For such other relief as applicants may be entitled to receive in the premises.



May 19, 1976

WILLIAM D. DENSON  
Attorney for the Applicants  
for Intervention  
551 Fifth Avenue  
New York, New York 10017  
Tel. (212) 687-1360

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

----- )  
BRITISH AIRWAYS BOARD and )  
CAMPAGNIE NATIONALE AIR FRANCE, )

Plaintiffs, )

v. )

) 76 Civ. 1276

THE PORT AUTHORITY OF NEW YORK AND )  
NEW JERSEY AND WILLIAM J. RONAN, )  
W. PAUL STILLMAN, JAMES G. HELLMUTH, )  
VICTOR R. YANITELLI, ANDREW C. AXTELL, )  
GEORGE F. BERLINGER, MILTON A. GILBERT, )  
ROBERT R. DOUGLAS, JAMES C. KELLOGG, III )  
GUSTAVE L. LEVY, MATTHEW NIMETZ, ALAN SAGNER, )

(Judge Milton  
Pollack)

Defendants. )

) ANSWER OF

) INTERVENERS

TOWN OF HEMPSTEAD, INCORPORATED )  
VILLAGE OF LAWRENCE, INCORPORATED )  
VILLAGE OF CEDARHURST, INCORPORATED )  
VILLAGE OF ATLANTIC BEACH, )  
ROBERT F. CHECK, MONA GOTTESMAN, AND )  
HERBERT WARSHAVSKY, )

Interveners. )  
----- )

Now come the Town of Hempstead, the Incorporated Village  
of Lawrence, the Incorporated Village of Cedarhurst, the Inc-  
orporated Village of Atlantic Beach, Robert F. Check, Mona  
Gottesman, and Herbert Warshavsky, separately and severally,  
as Interveners, through their attorney WILLIAM D. DENSON,  
answering the Complaint herein allege as follows:



### First Defense

The Complaint fails to state a claim against the defendants upon which relief can be granted.

### Second Defense

1. Interveners deny the allegations of paragraph 1 of the Complaint and of each sub-paragraph thereof.

2. Interveners are without knowledge or information sufficient to form a belief as to the truth of the averments of citizenship of the plaintiffs.

3. Interveners admit the allegations of paragraph 3 of the Complaint.

4. Interveners are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 4(a) and 4(b) of the Complaint.

5. Interveners admit the averments of paragraph 5 of the Complaint.

6. Interveners admit so much of the averments of paragraph 6 as allege that on, or about, February 4, 1976, the Secretary rendered a decision and order. Interveners deny that such decision and order would permit any Concorde flights into and out of JFK.

7. Interveners are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7 of the Complaint.

8. Interveners admit the averments of paragraph 8 of the Complaint.

9. Interveners deny each and every allegation of paragraphs 9 of the Complaint, except admit that the defendants, by resolution dated March 11, 1976, denied permission to operate any supersonic aircraft including the Concorde at JFK until at least six months of operating experience has been evaluated, as more specifically set forth in said resolution of the defendants.

10. Interveners deny the averments of paragraph 11 of the Complaint, except that interveners admit that the Secretary issued a decision, those remaining averments, and particularly those in sub-paragraphs (a)-(d) both inclusive, are mere characterizations of the plaintiffs of statutory provisions and require no response by the interveners.

11. The interveners deny the averments of paragraph 12 of the Complaint.

12. The interveners deny each and every averment of paragraph 13 relating to any broad and comprehensive scheme to control and regulate aircraft noise levels by the Federal government or any implementation of such scheme by the FAA Administrator.



13. The interveners are without knowledge or information sufficient to form a belief as to the truth of the averments of each of paragraphs 14, 15 and 16 of the Complaint.

14. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 17, 17 (a)-(e), both inclusive, and of paragraphs 18, 18 (a)-(c), both inclusive, of the Complaint.

15. Intervenors deny each and every averment of each of the paragraphs 19, 20, 21, 23, 24, 25, 26, 27 and 28, of the Complaint.

16. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the averments of each of the paragraphs 30, 31, 32 and 33 of the Complaint.

17. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34 of the Complaint, except that the Secretary's Decision and Order did refer to certain matters set forth in sub-paragraphs (a)-(f) both inclusive of paragraphs 34 of the Complaint.

18. Intervenors are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 35 of the Complaint.

19. Intervenors deny each and every averment of each of the paragraphs 36, 38, 39 and 40 of the Complaint.

20. Interveners deny that the plaintiffs or either of them are entitled to the relief sought.

Third Defense

21. The plaintiffs are precluded from maintaining this action in that:

a. plaintiffs knew and recognized that the Department of Transportation (hereinafter DOT) and the Federal Aviation Administration (hereinafter FAA), in the exercise of the rights granted the United States of America under any and all treaties, statutes, agreements, understandings and accords then prevailing, possessed the power and authority to forbid the plaintiffs the right to commercially operate Concorde aircraft at airports located in the United States; and

b. plaintiffs knew and recognized that the operation, at JFK, of the Concorde aircraft does and will produce an environmental impact adverse to the health and welfare of, and cause injury and damage to, the interveners residing in proximity to JFK; and

c. plaintiffs knew and understood that with the exception of airports operated by the Federal government, the use of airports in the United States were subject to non-discriminatory terms and conditions promulgated by airport proprietors or operators; and that satisfactory compliance



with such regulations was a condition precedent to such use by the plaintiffs; and

d. plaintiffs knew and understood that at least one of said terms and conditions promulgated by defendants forbade the use of JFK by any jet aircraft failing to obtain permission of defendants to land and take off at JFK, which term and condition was of long standing and was for the benefit of the defendants and for the benefit of interveners; and

e. plaintiffs knew and understood that said foregoing condition along with other conditions were a part of the application of plaintiffs for amending the operations specifications relating to the use of the Concorde aircraft, nevertheless the plaintiffs accepted said condition in making their application for said amendment, and did receive and accept from DOT/FAA two designated airports - one operated by the Federal government and one operated by the defendants; and

f. plaintiffs have accepted the benefits of said amendment granted by the DOT/FAA and have publicly announced the institution of commercial flights of said Concorde on May 24, 1976, to Muelles International Airport which is owned and operated by the Federal government; and

g. the plaintiffs have failed to comply with said terms and conditions of the defendants at JFK of obtaining permission to use the runways for said Concorde;



h. the plaintiffs cannot now be allowed to attack an officially approved condition of the amended operations specifications while retaining at the same time its benefits.

Fourth Defense

22. The plaintiffs are precluded from maintaining this action in that:

a. the defendants, acting for their own benefit and for the benefit of interveners have exercised the powers and authority vested in the proprietor and operator of an airport by promulgating and enforcing non-discriminatory Terms and Conditions forbidding jet aircraft using the facilities of JFK without permission and when originating noise of an intensity of 112 PNdB (Perceived noise decibels) or more; and

b. the Concorde aircraft fails to comply with said regulations; and

c. said term and condition purports to and does regulate a matter of local concern with respect to which Congress has not exercised its authority, in recognition of a long standing policy that airport noise is best controlled locally by airport operators and proprietors familiar with the problems existing at that time and place, and that such local interest outweighs whatever national interest there might be in preventing local regulation.



Fifth Defense

23. The plaintiffs are precluded from maintaining this action in that:

a. the defendants as the operator or proprietor of an airport have the right and the authority to promulgate non-discriminatory terms and conditions for the use of the physical facilities of JFK including its runways; and

b. pursuant to such right and authority of said defendants to impose terms and conditions said defendants have forbidden the use of the runways at JFK to the operation of any supersonic jet aircraft without an evaluation of six months of its operational data relating to noise and other environmental characteristics; and

c. said Term and Condition take into consideration such facts as local land use plans, policies, and controls promulgated by interveners, the effects of said Term and Condition on businesses, investments, and necessary changes in social and economic activities of interveners and their residents; and

d. such facts are different from and vary with respect to airports located in different states and in different localities within the same state, and demand the application of that knowledge and expertise peculiarly within the ken of local airport operators and proprietors; and

e. such terms and conditions and their application, considering all relevant facts and circumstances, constitute a matter local in character involving practical difficulties which may never be adequately dealt with by Congress; and

f. the Concorde has not complied with said Terms and Conditions lawfully imposed by the defendants for the benefit of interveners and for the defendants.

#### Sixth Defense

24. The plaintiffs are precluded from maintaining this action in that:

a. Pursuant to the provisions of 49 USC 1431 the Environmental Protection Agency (EPA) did, on or about January 13, 1976, submit to the Administrator of the Federal Aviation Administration (FAA) a proposed regulation for control of noise emitted by supersonic jet aircraft; and

b. the effect of the regulation so proposed would bar the operation of supersonic jet aircraft including the Concorde in the United States in commercial service; and

c. thereafter the Secretary of Transportation did wrongfully and unlawfully, on or about February 5, 1976, issue a Decision and Order, relating to the operation of said Concorde aircraft in commercial use in the United States, the



effect of said conduct was to render inoperable the statutory procedures enacted by Congress for affording present and future relief and protection to the health and welfare of applicants from aircraft noise;

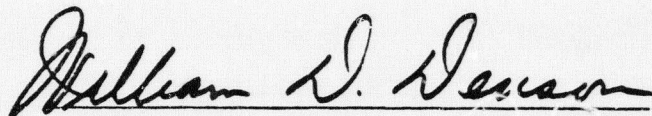
d. said action of the Secretary has forced the EPA and FAA to embark upon a procedure which is nothing more than a sham or pretense, incapable of producing an objective determination of suitable noise levels, thereby making certain that the statutory machinery with which the Secretary is entrusted does not discharge the function for which it was designed; and

e. said action of the Secretary is inconsistent with the public interest and was undertaken with the full knowledge that the noise emitted by said Concorde aircraft is four or five times as intense as the upper limit of tolerable noise recommended by the EPA and as previously adopted as a permissive level of noise in 14 C.F.R Part 36, and with the further knowledge that applicants would probably be injured in their person and damaged in their property and with reckless disregard of the consequence.

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WHEREFORE, Interveners pray that the Complaint of the plaintiffs be dismissed along with an award of costs and disbursements of this action.

Dated: May 19, 1976

A handwritten signature in cursive script, reading "William D. Denson", written in dark ink.

WILLIAM D. DENSON  
Attorney for Interveners  
551 Fifth Avenue  
New York, New York 10017  
(212) 687-1360



AFFIDAVIT OF ROBERT F. CHECK

STATE OF NEW YORK     )

COUNTY OF NEW YORK    )

ROBERT F. CHECK being first duly sworn  
deposes and says:

1. My name is Robert F. Check, I live  
at 57 Cedar Road in Inwood, New York.

2. Inwood is an unincorporated area within  
the territorial limits of the Town of Hempstead in the County  
of Nassau, State of New York.

3. I own my home located at the above address  
and have lived therein for the last twenty years and in the  
Inwood area for the last forty years which was before John F.  
Kennedy airport became a jet port. The present cash market  
value of said home is approximately \$50,000 and is situated  
in a residential community consisting of hundreds of homes of  
comparable or of less or of greater value.

4. I pay to the Town of Hempstead a tax each  
year based upon the value of said home, as do other home owners  
who are residents of the Town of Hempstead.

5. The Inwood area is in close proximity to the John F. Kennedy Airport (hereinafter JFK) and my home is approximately 5000 feet from the eastern end of runway 31L at JFK and within the flight path of aircraft using runway 31L. Within this flight path running easterly, there are, in my judgment, several thousand residents of the Incorporated Village of Lawrence, Cedarhurst, and Atlantic Beach as well as some residences that range in value up to over \$100,000 each.

6. I have operated a plumbing business in this area for many years and am thoroughly familiar with the area and the value of properties therein.

7. My family consists of a wife, one son and one daughter, the respective ages of the children being 18 and 22 respectively. My son has suffered with a cardiac ailment that was aggravated by excessive noise. For that reason I became interested in and have actively participated in efforts to mitigate or alleviate the noise associated with airport operations which has heavily impacted the surrounding community at JFK.

8. During the course of the past years I have become familiar with the noise emitted by various aircraft. The noise emitted by some 707s and some 727s is so severe as to

A 82<sup>2</sup>



cause me and members of my family serious physical discomfort, prevent us from going to sleep, arouse us from sleep, prevent us from engaging in normal conversation personally or via the telephone, makes us nervous and irritable, interferes with religious services and instruction in the schools, shakes the ceiling and walls of our home down to the very foundations, creates alarm and apprehension for my safety and the safety of members of my family, and has caused shock to my nervous system, as well as such increased stress generally as to produce indigestion and gastro-intestinal malfunctions.

9. It is my information and belief that the Concorde aircraft in using the runways at JFK is capable of and will emit noise whose intensity is not less than five times that of the 707 and 727 aircraft whose effects have been described above.

10. The noise of such intensity will render my home and others located in the Town of Hempstead, Incorporated Villages of Lawrence, Cedarhurst and Atlantic Beach completely uninhabitable as dwellings and prevent the normal use and reasonable enjoyment of same by their owners and occupants. It will adversely affect the use and enjoyment of recreational facilities in said Town and Villages.

11. The noise and pollutants of the Concorde aircraft, in using JFK, will adversely affect the existing quality of life and environment in said communities surrounding JFK to the extent of driving out the home owners and businesses resulting in severe losses in land values to me and other property owners in said localities similarly situated.

12. In all of my efforts to alleviate the impact of the noise and stench upon our community arising from the operation of JFK our complaints were addressed to the Federal Aviation Administration and to the Port Authority of New York and New Jersey. This is the first time in the last decade or more that ostensibly we are working for the same thing. Prior to this time our interests have been opposed because they have represented the interests of the operating airlines which were creating our injury and discomfort. If the Port Authority of New York and New Jersey permits the Concorde to use its facilities at JFK, they will be called to account for such conduct and the injury and damage I will sustain in the proper court.

13. I have read the document entitled "Motion To Intervene As Defendants" and am familiar with its content.

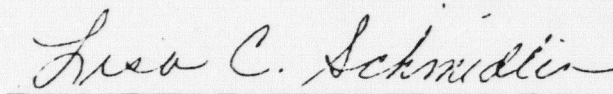


The matters and facts asserted therein are true and correct  
except as to those asserted upon information and belief, and  
as to such latter matters they are believed to be true.



Robert F. Check

Subscribed and Sworn to before me on this the 4<sup>th</sup>  
day of May, 1976.



Notary Public

LISA C. SCHMIDLIN  
Notary Public, State of New York  
No. 31 5321138  
Qualified in New York County  
Commission Expires March 30, 1978

A85<sup>5</sup>

AFFIDAVIT OF MONA GOTTESMAN

State of New York )

County of New York )

MONA GOTTESMAN being first duly sworn deposes  
and says:

1. I reside at 430 Arbuckle Avenue, Cedarhurst, New York. I have been a resident of the Incorporated Village of Cedarhurst since I and my husband purchased our home in the Fall of 1973.

2. My home is located within the flight path of aircraft using runways at JFK lying in an east-westerly direction and is apporximately 5000 feet from the end of such runway.

3. At the present time aircraft fly over my home at very low altitudes, as low as 100 to 200 feet. The noise made by such aircraft is very severe, causing the house to shake, interrupting conversation, creating fear and apprehension, shock to me, and at times making the house almost uninhabitable.



4. Any increase in the noise level from aircraft flying overhead or originating at JFK will make living there at my home impossible.

5. At the present time my two young children ages 11 and 9 years respectively are being subjected to interruptions in their schooling because of the present noise level generated by aircraft using JFK.

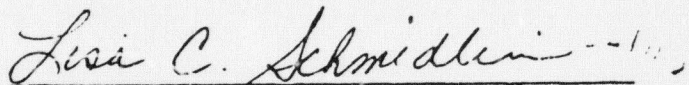
6. The conditions I have described are those endured by literally hundreds of other residents of the Incorporated Village of Cedarhurst.

7. An increase in the noise level from aircraft using JFK may drive many persons out of this area as the tolerable level of such noise is fast being exceeded in intensity and amount.



Mona Gottesman

Subscribed and sworn to before me on this 19<sup>th</sup> day of May, 1976.



LISA C. SCHMIDLIN  
Notary Public, State of New York  
No. 31-9821138  
Qualified in New York County  
Commission Expires March 30, 1978

Notary Public

AFFIDAVIT OF HERBERT WARSHAVSKY

State of New York )

County of New York )

HERBERT WARSHAVSKY being first duly sworn  
deposes and says:

1. I reside at 22 Meadow Lane, Lawrence, New York, and have occupied said residence, which I own, for the past 26 years. Lawrence is located in the Town of Hempstead, Nassau County.

2. For many years I have been engaged in property management and in the buying and selling of real estate in New York City and in Lawrence. I am familiar with the value of real estate in Lawrence, Cedarhurst and Atlantic Beach, over the past decade.

3. Both Lawrence and Cedarhurst are primarily residential areas and these residences range in value from \$25,000 or \$30,000 up to \$250,000 in value. My house is valued at about \$65,000.

4. Lawrence has a population of approximately 6900 residents and is approximately 4.5 square miles in area.



Lawrence has an eighteen hole golf course that is owned and operated by the Incorporated Village of Lawrence, along with seven tennis courts, and a marina consisting of 110 slips for boats.

5. I am and have been since 1972 a Trustee of the Village of Lawrence and know that the revenues from the operation of these three facilities exceeds \$500,000. I also know that Lawrence levies and collects an advalorem property tax on real properties within its jurisdiction and that such revenues are essential to the administration of the Village government.

6. My residence on Meadow Lane is within the flight path of aircraft using runways at John F. Kennedy International Airport (JFK). Over the years I have become familiar with the noise emitted by various jet aircraft such as the 707, 727, 747, DC 8, 9 and 10 and others, as they fly over my house, and as they rev up preparatory to taking off.

7. The area included in the corporate limits of Lawrence, Cedarhurst and Atlantic Beach are presently heavily impacted by jet aircraft noise.

8. The noise emitted by these planes using JFK is so intense in these areas as to constitute a serious interference with the enjoyment by the residents of the recreational facilities and of their homes in that sleep is prevented and disturbed, normal communication is interrupted, religious worship is interfered with, and on occasions the noise has been so severe as to cause shock to my nervous system producing irritability and discomfort.

9. As a resident and in my capacity as a Trustee of the Incorporated Village of Lawrence I have from time met with representatives of the Port Authority of New York and New Jersey attempting to alleviate the intensity of the aircraft noise originating at JFK and which plagued the areas of Lawrence, Cedarhurst, Atlantic Beach and Inwood. These efforts were met with promises and promises but no success over the years. Noise abatement procedures suggested and agreed to by the Port Authority and the FAA have not been enforced by either of these agencies. Our area has been and still is the victim of the airline operators who choose to save money rather than conform to those more expensive routing procedures which would mitigate our suffering from the excessive noise.



10. It is my information and I do believe it that the intensity of the noise emitted by the Concorde aircraft is in excess of five times that of the loudest of our subsonic jet aircraft, the B 707. I do know from my experience that noise of that increased intensity will cause our residents, in the areas of Lawrence, Cedarhurst, Atlantic Beach and Inwood to be exposed to much more severe shock, vibration, and personal discomfort and injury than that presently experienced. Such noise from the Concorde will render homes, in the flight path of runway 31L at JFK, and there are hundreds of such homes, to become uninhabitable.

11. There will be an economic and social disruption in the area that will cause depreciation in land values in substantial amounts and certainly in excess of millions of dollars; there will be losses in tax revenues from property and business and in revenues from the recreational facilities in the area that belong to the Town of Hempstead, Lawrence, Cedarhurst and Atlantic Beach.

12. I have read the document entitled "Motion To Intervene As Defendants" and am familiar with its content. The matters and facts asserted therein are true and correct except as to those assertions made upon information and belief,

and as to the latter matters they are believed to be true.

Herbert Warshavsky  
Herbert Warshavsky

Subscribed and sworn to before me on this the 19<sup>th</sup>  
day of May, 1976.

Lisa C. Schmidlin

Notary Public

LISA C. SCHMIDLIN  
Notary Public, State of New York  
No. 31-9821138  
Qualified in New York County  
Commission Expires March 30, 1978



**THE PORT AUTHORITY OF NY & NJ**

One World Trade Center  
New York, N.Y. 10048

June 3, 1976

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Re: British Airways Board, et al.  
v. Port Authority, et al.<sup>76</sup>  
Civ. 1276 (MP) - Motions to  
Intervene by Town of Hempstead et  
al and Friends of the Earth, Inc.  
et al

Dear Judge Pollack:

Although the Port Authority does not oppose the motions to intervene filed in this action, we nevertheless feel compelled to comment on two issues which intervenors raise that we believe are extraneous to the issue between the parties. That issue is whether, under federal statutes and treaties, the Port Authority, acting in its capacity as airport proprietor, has any power whatsoever to grant or deny permission for plaintiffs' supersonic aircraft to use Kennedy Airport. The movants will raise, and needlessly so, whether the Port Authority's action in banning such aircraft, including the Concorde, can be construed as an exercise of the police power of the two States of which the Port Authority is an agency and whether the Concorde can meet the Port Authority's existing 112 PNDB standard applicable to subsonic jet aircraft.

1. The Legal Basis For The Port Authority's  
Concorde Resolution

The suggestion by the Town of Hempstead et al that the resolution of the Port Authority's Board of Commissioners relating to the Concorde was adopted to protect the health and welfare of Kennedy Airport's neighbors may well have the unfortunate, and we believe unintended, result of broadening the legal issues in this suit by enabling plaintiffs to argue that the ban is clearly unconstitutional under the 1973 decision in City of Burbank v. Lockheed Air Terminal, 411 U.S. 624. In Burbank the Supreme Court held that all state and local police power regulations in the field of aircraft noise abatement have been preempted by Congress for exclusive control by the Federal

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Hon. Milton Pollack

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June 3, 1976

Government. The fact is that the sole legal basis for the Port Authority's aircraft noise restrictions, including the restriction at issue in this litigation, has been the inherent right of a landlord under the common law to control the use of its property and reasonably to regulate such use. An airport operator's right to impose such restrictions when acting in its capacity as an airport proprietor - which is the only issue in this case - was not involved in Burbank and, indeed, was expressly excluded by the Supreme Court from its decision in that case.

2. Answer of Intervenors, Town of Hempstead, et al.

The fourth defense contained in the proposed answer by the Town of Hempstead et al clearly raises an issue which is not germane to this litigation. That defense asserts that plaintiffs' suit must be dismissed because the Concorde cannot meet the Port Authority's existing noise restrictions applicable to subsonic jet aircraft (112 PNdB on takeoff). However, the Port Authority resolution of March 11, 1976, which is the subject of this litigation, does not apply the 112 PNdB standard to the Concorde. Instead, it denies permission for any supersonic aircraft, including the Concorde, to operate at Kennedy Airport pending an in depth analysis of the Concorde's noise characteristics and an evaluation of community reaction thereto. As the resolution indicates, a major purpose of the study is to determine whether the perceived noise decibel (PNdB), which was developed by Port Authority acoustical consultants to measure a listener's subjective reaction to the high frequency noise generated by subsonic aircraft compared with that of piston aircraft, is a valid measurement of a listener's subjective reaction to the low frequency noise and vibrations generated by the Concorde. It is entirely possible that the 112 PNdB standard is unsuitable for application to the Concorde. It would thus appear that Hempstead et al's fourth defense which is based on the inability of the Concorde to meet the 112 PNdB limitation stems from a misunderstanding of the purpose and scope of the Port Authority resolution involved in this litigation.

In addition, we cannot allow to go unchallenged the wholly unwarranted assertion made by both sets of intervenors that, for a variety of reasons, including the possibility of increased revenues from Concorde operations, the Port Authority may not defend this law suit with due diligence. Suffice it to say that the possibility of increased revenues did not prevent the Port Authority from imposing takeoff noise restrictions on subsonic jet aircraft from 1958 to the present time; nor did it

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THE PORT AUTHORITY OF NY & NJ

Hon. Milton Pollack

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June 3, 1976

prevent the Port Authority from obtaining an injunction compelling United Airlines to comply with a temporary ban on the use of jet aircraft on a runway at LaGuardia Airport. Port of New York Authority v. Eastern Airlines, 259 F. Supp. 745 (E.D.N.Y. 1966). Indeed the vigilance with which the Port Authority has acted to preserve the integrity of its airport noise restrictions is illustrated by its participation amicus curiae in the Burbank case. I believe that it was directly in response to the arguments contained in our brief, that the Supreme Court's opinion in that case not only distinguished between police power regulation and an airport operator's restrictions but also specifically limited the scope of its decision to police power measures.

Respectfully,

*Patrick J. Falvey*  
Patrick J. Falvey,  
General Counsel

cc: William C. Clarke, Esq.,  
attorney for British Airways Board

Rogers & Wells, Esqs.,  
attorneys for Compagnie Nationale Air France

William D. Denson, Esq.,  
attorney for Town of Hempstead, et al.

Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, Esqs.,  
attorneys for Friends of the Earth, et al.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRITISH AIRWAYS BOARD and  
COMPAGNIE NATIONALE AIR FRANCE,

Plaintiffs,

v.

THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY, ET AL.

Defendants.

TCWN OF HEMPSTEAD, Et Al.

Applicants for Intervention

76 Civ. 1276  
(Judge Milton  
Pollock)

OPPOSITION OF BRITISH AIRWAYS BOARD  
TO MOTION TO INTERVENE

British Airways Board opposes the motion of the Town of Hempstead and others ("Hempstead") to intervene in this action against the Port Authority of New York and New Jersey. Hempstead has not shown itself entitled to intervene under Rule 24(a) of the Federal Rules of Civil Procedure. The Court has already indicated its disposition not to permit intervention under Rule 24(b), and we therefore do not address that alternative argument of Hempstead's.

During a status conference held in chambers on May 7, 1976, this Court specifically directed Hempstead's counsel to file papers detailing the specific factual basis

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for counsel's claims of (1) Hempstead's interest in this action; and (2) inadequate representation of any such interest by the Port Authority. Hempstead was thus on notice that its supporting documentation was to be specific and to contain hard factual data. Despite the length of the papers filed with the Court, Hempstead has failed to carry the burden of showing either the requisite specific interest in the action or the inadequacy of the Port Authority's representation of any such interest.\*

The lengthy documents submitted by intervenors -- including three personal affidavits by individuals who "on information and belief" fear injury from Concorde operations at John F. Kennedy International Airport -- are replete with unfounded speculation rather than specific factual information concerning the risk of injury due to limited Concorde flight operations at JFK. Without any factual basis whatever, intervenors claim that Concorde will cause physical injury and property damage -- despite the contrary findings of Secretary of Transportation Coleman that the limited Concorde operations authorized at JFK would increase noise levels "relatively little com-

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\* / The intervention papers filed on May 27, 1976, on behalf of Friends of the Earth, Metrosuburban Aircraft Noise Association, Howard Beach Associates, Emergency Coalition to Stop the SST, Joseph R. Lewis and Carol Berman also fail to meet the burden of proof established by the case law and emphasized by this Court. Their intervention should be denied.

pared to the existing levels of noise exposure" and cause no risk of property damage.<sup>\*\*/</sup> The Secretary's Decision has recently been affirmed by the Court of Appeals for the District of Columbia Circuit. Environmental Defense Fund et al. v. U.S. Department of Transportation, et al., D.C. Cir. Nos. 76-1105, etc., Order of May 19, 1976.

Hempstead has also failed to establish that representation of its alleged interest by the Port Authority will be inadequate. The Port Authority has indicated every intention seriously and diligently to defend this action. Certainly, its interest and that of Hempstead are essentially the same. While Hempstead has vaguely alleged that the Port Authority may be less than aggressive in defending its decision denying limited Concorde operations for six months, no specific facts are offered by Hempstead to support its speculative claims attacking the good faith of the Port Authority. Obviously, if it should develop that the Port Authority fails aggressively

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<sup>\*\*/</sup> The Secretary's Decision is Exhibit 1 to Plaintiff's Complaint. The discussion of Concorde noise at JFK is at pages 43-47.



to defend its Concorde decision, Hempstead may renew its motion. This Court has made it plain that it would entertain a renewed motion to intervene in appropriate circumstances.

William C. Clarke

William C. Clarke  
British Airways  
245 Park Avenue  
New York, New York 10017  
(212) 983-3113

Respectfully submitted,

Peter J. Nickles *(wte)*

Peter J. Nickles  
Covington & Burling  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 452-6412

Attorneys for British Airways

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UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

----- x  
BRITISH AIRWAYS BOARD AND  
COMPAGNIE NATIONALE AIR FRANCE,

Plaintiffs,

v.

THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY AND WILLIAM J. RONAN,  
W. PAUL STILLMAN, JAMES G. HELLMUTH,  
VICTOR R. YANITELLI, ANDREW C. AXTELL,  
GEORGE F. BERLINGER, MILTON A. GILBERT,  
ROBERT R. DOUGLAS, JAMES C. KELLOGG, III,  
GUSTAVE L. LEVY, MATTHEW NIMETZ, ALAN  
SAGNER,

Defendants.  
----- x

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:  
:  
: 76 Civ. 1276

:  
: (Judge Milton  
: Pollack)

MEMORANDUM OF AIR FRANCE  
IN OPPOSITION TO  
MOTIONS TO INTERVENE

Air France submits this memorandum in opposition to  
two motions filed by applicants for intervention.\* Both motions

\* The applicants are in one motion ("Motion 1"):

Town of Hempstead, Incorporated  
Village of Lawrence, Incorporated  
Village of Cedarhurst, Incorporated  
Village of Atlantic Beach,  
Robert F. Check, Mona Gottesman and  
Herbert Warshavsky;

and in a second motion ("Motion 2"):

Friends of the Earth, Inc., Metro  
Suburban Aircraft Noise Association,  
Inc., Howard Beach Association, Inc.  
Emergence Coalition to Stop the SST,  
Joseph R. Lewis and Carol Berman.

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are based on Rules 24(a) (2) and 24 (b) (2) , F. R. Civ. P., relating, respectively, to intervention as of right and by permission.

Applicants' motions should be denied because:

1. Despite the Court's express direction at a pre-argument conference, Applicants have not shown any factual basis for asserting an "interest" in any "property or transaction which is the subject of the action" within the meaning of Rule 24(a) (2).

The sole issue raised in the pleadings before the Court is whether defendant Port Authority could, consistent with the Constitution, treaties and laws of the United States, adopt and enforce a certain Resolution annexed to the Complaint. Applicants make no claim that any of them has the right, power or authority (i) to adopt or enforce any such resolution, order or the like or (ii) to require Port Authority to do so on their behalf. Thus, Applicants' showing fails to meet the threshold requirement of asserting a "right" or "interest" which belongs to them, as distinct from one belonging to existing parties. See, United States v. 936.71 Acres of Land, 418 F.2d 551, 556 (5th Cir. 1969); In re Penn Central Commercial Paper Litigation, 62 F.R.D. 341 (S.D.N.Y. 1974), aff'd without opinion, 515 F.2d

505 (2d Cir. 1975); Kheel v. American Steamship Owners Mutual Protection and Indemnity Ass'n, 45 F.R.D. 281, 284 (S.D.N.Y. 1968).

Nor do applicants claim that their activities are governed by the Port Authority's Resolution - none claims any interest or right in operating aircraft to or from JFK airport. New York Pub. I.R.G., Inc. v. Regents of Univ. of St. of N.Y., 516 F.2d 350 (2d Cir. 1975) is clearly distinguishable on this ground. In that case - unlike the present one - intervenors' professional conduct was directly governed and controlled by the specific regulation in suit. On the several grounds enumerated by the Court, the "interest" asserted by the intervenors in that case was found to be direct and substantial.

2. The claims indirectly asserted by Applicants relate to (i) their use and ownership of property in the vicinity of JFK and (ii) a general interest in the environmental impact of the Concorde. These claims are based on "information and belief" and amount to speculation as to the future. Whatever merits such claims may have, they should not be resolved in this proceeding for the following reasons:

(a) Both as to a theory of liability and as to questions of damages, if any, Applicants' claims raise difficult factual and legal questions which need not be resolved to determine the present



controversy. As Judge Wyzanski aptly noted in Crosby S. Gage & Valve Co. v. Manning, Maxwell & Moore, 51 F.Supp. 972, 973 (D. Mass. 1943):

"[Additional parties] are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair."\*

The introduction of such confusion may, by delay alone, cause substantial prejudice to the existing parties.

(b) In contrast, Applicants have not shown that any of their legitimate interests will be prejudiced, in any sense, by asserting such claims for relief as they might have in a proper forum at an appropriate time. As Applicants repeatedly assert, they are prepared to assert such claims as they may have in separate proceedings.

3. Again, despite the Court's express direction, Applicants have not shown any present factual basis for their speculation that Port Authority will not adequately represent

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\* For example, the two motions and their supporting papers comprise over 90 pages of material. And, despite the Court's express direction at a conference held May 8 that these motions be filed promptly, so that the parties would have adequate time to respond prior to June 1, Motion 2 was not served until May 27.

its interests herein.\* If history is any guide, it can be expected that Port Authority will advocate its position vigorously and fully, as it has frequently done when its power to adopt and enforce regulations has been challenged, directly or indirectly. See, e.g., Wolin v. Port of New York Authority, 392 F.2d 83 (2d Cir. 1968); Port of New York Authority v. Eastern Air Lines, Inc., 259 F.Supp. 745 (E.D.N.Y. 1966).

#### CONCLUSION

For the reasons assigned, Applicants' motion to intervene should be denied.

Respectfully submitted,

ROGERS & WELLS

By John A. Wells  
A Member of the Firm

Attorneys for Plaintiff,  
Compagnie Nationale Air France

200 Park Avenue  
New York, N. Y. 10017

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\* Applicants clearly have such a burden: Afro American Patrolmens League v. Duck, 503 F.2d 294 (6th Cir. 1974); Edmundson v. State of Nebraska ex rel Meyer, 383 F.2d 123 (8th Cir. 1967).



BRITISH AIRWAYS BOARD and  
CAMPAGNIE NATIONALE AIR FRANCE,  
  
Plaintiffs,  
  
v.  
  
THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY, ET AL.  
  
Defendants.  
  
TOWN OF HEMPSTEAD, ET AL.  
  
Applicants for Intervention

State of New York )  
County of New York)

1. I am a member of the Bar of this Court and have represented the applicants for intervention, Town of Hempstead, et al, from the date of their first efforts to participate in this proceeding, and am familiar with all of the proceedings had up to the present time in this case.

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2. I have read the oppositions of the plaintiffs to said applicants' motion to intervene. Certain allegations contained in paragraphs 7, 8 and 9 of the motion were made upon information and belief due to the fact that applicants had no first hand knowledge of the noise emitted upon take-off of the Concorde measured in this country.

3. On or about May 25, 1976, the press recorded that the Concorde took off from Dulles International Airport and the noise emitted on that occasion was measured at 129 EPNdB. For comparison purposes measurements were taken of the noise emitted by some sub-sonic jets.

4. These events and measurements are set forth in the New York Times of May 26, 1976, under a by line of Richard Witkin a copy of which is attached to this affidavit, as well as in an article appearing in the New York Daily News dated May 26, 1976, a copy of which is attached to this affidavit.

5. The accuracy of these measurements showing a noise emitted by the Concorde of 129 EPNdB have not been contradicted by the plaintiffs.

6. It is my understanding that information concerning this noise level of the Concorde on that occasion was carried in most of the news media on the Eastern seaboard.

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7. The notariety of this information is such as to warrant the amendment of Paragraphs 7, 8 and 9 by striking therefrom the allegations "on information and belief" where ever the same appears in each of said paragraphs, as well as striking "136" and substituting 129 therefor in paragraph 7.

8. This data having been generated subsequent to the filing of this motion it is respectfully requested that this Court accept and treat said motion as modified in accordance with the preceeding paragraph.

Hallam D. Leason

Subscribed and Sworn to on the 10th day of June, 1976.

Lisa C. Schmidlin

Notary Public

LISA C. SCHMIDLIN  
Notary Public, State of New York  
No. 31-9821138  
Qualified in New York County  
Commission Expires March 30, 1978



NEW YORK TIMES 5/26/76

# FRENCH CONCORDE DEPARTS NOISILY

Leaving Washington, It  
Doubles the Sound Level  
Allowed in New York

By RICHARD WITKIN  
Special to The New York Times

CHANTILLY, Va., May 25—The French, and British Concorde that opened North Atlantic supersonic service yesterday flew full loads back to Europe today, with the French plane unwittingly providing ammunition for ban-the-Concorde advocates.

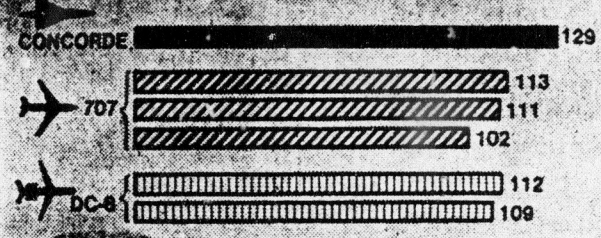
The Air France craft recorded a thundering 129 perceived noise decibels on one strategically placed sound meter. That was well over twice the maximum sound output the plane will be allowed if they are ever to fly into Kennedy International Airport in New York where SST's are now banned in a legal dispute over the noise.

Offsetting the psychological reversal caused by today's high noise reading was the fact that the Air France takeoff drew generally mild reactions from nearby communities that noise rules are intended to protect. A limited sampling of opinion found most residents had not been unduly bothered by the takeoff, though the whole project, exciting, but agreed that the takeoff was noisier than

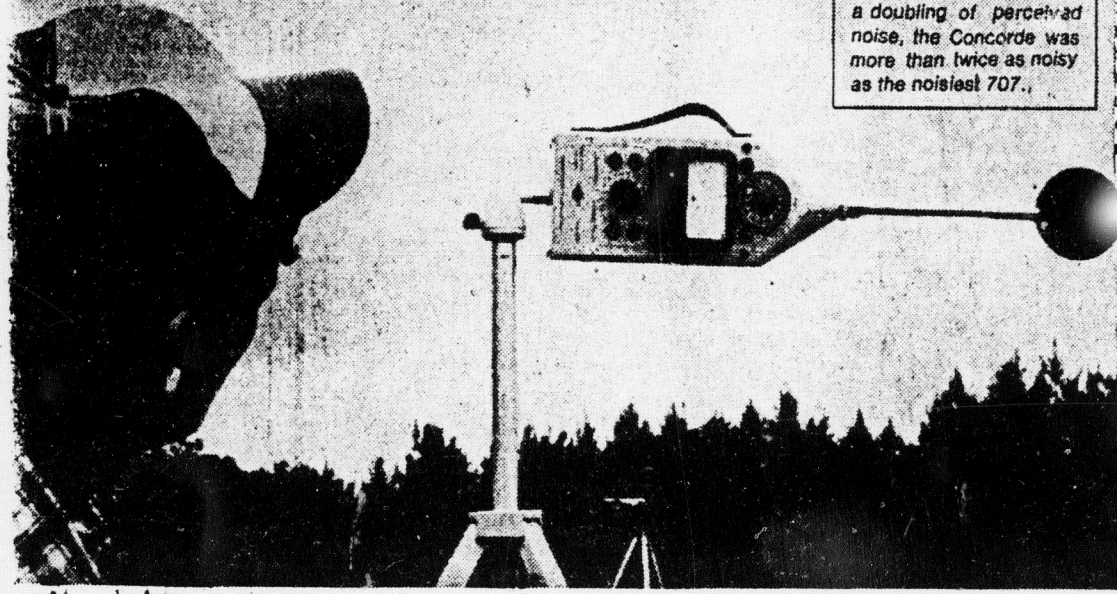
Continued on Page 78, Column

## Noise Levels of the Concorde and Other Aircraft at Dulles Airport Yesterday

(Perceived Noise in Decibels)



The French Concorde registered 129 decibels, or 16 decibels more than the loudest of the three 707's that took off before it. Since each increase of 10 decibels means about a doubling of perceived noise, the Concorde was more than twice as noisy as the noisiest 707.



The New York Times/Photo, United Press International

A Federal Aviation Administration official checking noise level of the French Concorde as it left Dulles yesterday.

NEXT DIRECT

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# French SST chalks up 129 decibels on takeoff

Special to The Press from  
Newhouse News Service

WASHINGTON — Federal Aviation Administration noise meters recorded a resounding 129 decibels when the French Concorde took off from Dulles International Airport yesterday.

The reading was about 35 decibels higher than the highest noise levels produced by the noisiest domestic airliners. The British demanded that their plane be allowed to take off from a runway unmonitored by either FAA instruments or by the Press Corps assembled at Dulles.

Additionally, the French and British moved up their Concorde take-offs by an hour yesterday from published take-off times.

The outcry in Congress was immediate and intense. Rep. Lester Wolff, Kensington Democrat, who will chair a hearing today into allegations that the Ford administration bowed to agreements made by the Nixon administration to let the Concorde into the

L.I. PRESS

United States, said the change of runways decision "was a clear sign FAA wants to hide the noise intensity of the Concorde."

Rep. John Wydler, Garden City Republican who was frustrated yesterday in his attempt to record actual noise levels of the Concorde, said that he personally intends "to get to the bottom of this once and for all."

Wydler issued an immediate formal demand to FAA to answer why the departure times were moved up and why the British Concorde was allowed to use an unmonitored runway.

"There was no reason for that action that I can determine unless it was specifically to avoid a true reading of the noise levels," he declared.

Wydler, who was miles away from the path traveled by the British Concorde, said his reading of the plane was in the low 80s. Another testing group, nearer but not underneath the Concorde, registered it just over 100 decibels.

5/26/76

As the plane carrying 79 passengers and a crew of 10 flew overhead at about 900 feet, trained observers could hardly believe what they heard as the throaty roar kept climbing to the 129 decibel reading. It was agreed that the pilot must have neglected to follow Dulles procedures and cut power at 500 feet. Captain Duval confirmed later that he had kept power on to minimize community noise.

His technique evidently had the effect he desired. At Pinewood-Manor, a development of homes in the \$30,000-\$40,000 range about a mile from the site, Connie McEliece, rake in hand outside her dwelling, said later: "Today, it was a little loud, but nothing like we expected it to be. Some of the other ones are louder. Some of the [Boeing] 747's rattle windows more than these."

## Flights Completed

PARIS, May 25 (UPI)—The Air Force Concorde touched down at Charles de Gaulle airport at 9:50 P.M. (3:50 E.D.T.) on its return flight from Washington after 3 hours 47 minutes in the air. The British Concorde landed in London at 9:37 P.M. (4:37 E.D.T.), after a flight of 3 hours 37 seconds.

N.Y. TIMES 5/26/76  
END A109

## FRENCH CONCORDE DEPARTS NOISILY

Continued From Page 1, Col. 5

yesterday's landing over the same area. [Page 78.]

The British Airways plane took off almost an hour behind its sister craft, and caused little commotion. It used a parallel runway headed over less populated terrain and, because of the pilot's unexpected runway choice, the noise meter was not in place.

An explanation for the confusing contrast between meter readings on the French plane and the subjective reactions of residents was offered by the captain of the French plane, Pierre Duval, after he landed in Paris.

He was quoted as saying, in a telephone conversation with an airline spokesman in New York, that he had been trying to limit the noise over the populated area, not at the airport.

"Therefore," the spokesman continued, "he adopted a faster rate of climb using the afterburners. He could have cut the afterburners at 500 feet, but would have made more noise over the populated area."

All in all, the return flights to Europe from Dulles International Airport here had to be counted at least a temporary setback for the Concorde program.

The first word was that the planes would take off on runway 11, the more westerly of two parallel runways headed 10 degrees to the north.

About half an hour before takeoff time, the wind changed and the Government monitoring team, accompanied by several news people, was told the takeoff would be in the opposite direction (190 degrees) and on the other runway.

There was a fast and dusty 10-mile trip to a southerly monitoring site. And Edward Sellman, of the Federal Aviation Administration's Office of Environmental Quality, began picking up raw readings on other planes taking off: 113 perceived noise decibels for a Boeing 707, 112 for a DC-8.

In the logarithmic scale used in decibel readings, an increase in 10 doubles the sound output, so that 122 perceived noise decibels is twice as noisy as 112 decibels.

Just after noon the triangular-winged Air France Concorde climbed toward the monitoring site as it headed for Paris, four hours away as against eight for regular subsonic jets. There are 13 monitoring sites in all. But none of the others can give same-day readings of raw data.

(N.Y. TIMES CONT)



# France's SST Is Very Noisy On Its Takeoff

By BRUCE DRAKE

Washington, May 25 (News Bureau) — An Air France Concorde lifted off from Dulles Airport for its return to Europe today, and preliminary tests indicated that it was noisier on takeoff than conventional jets are.

The Air France plane and a British Concorde arrived at Dulles yesterday to open commercial SST service to this country.

The French jet left the ground on its 1,400-mph dash to Paris at 12:04 p.m. Federal Aviation Administration officials, who were monitoring noise levels from a point about 3½ miles from the runway, recorded a reading of 129 perceived noise decibels for the takeoff.

That reading compared with recorded levels of 102, 111 and 113 decibels for three Boeing 707s that took off within an hour of the SST.

It also exceeded the 112.7-decibel mark that the Air France jet had registered when it landed yesterday. For the landing, the FAA took its readings from a monitor about a mile off the runway.

The noise readings on the landings (the British jet registered 116.5 decibels) were comparable with sound levels for conventional jetliners, the FAA said.

## Extra Precautions

There was no takeoff reading for the British SST, which left Dulles at 12:58 p.m. for London, because the plane switched runways and the FAA equipment was out of place. Officials of the agency said that the pilot had requested the change to minimize noise for residents of the area around the airport.

The Air France Concorde returned to Charles de Gaulle Airport outside Paris after a flight of 8 hours and 47 minutes. The British Airways return flight took 3 hours and 37 minutes to get back to London.

Passengers boarding the planes had to submit their luggage to a check by security police, who used electronic "sniffers" designed to detect the odor of explosives. Luggage was also passed under an X-ray machine.

"A flight like Concorde, with all its publicity, is more likely to attract bomb threats and sabotage," said Denis Phipps, security chief for British Airways, explaining the extra precautions.

There were several hundred spectators on hand for the takeoff today, but the crowds did not compare with the thousands who flocked to the airport yesterday to watch the first commercial SST landings in the U.S.

An FAA spokesman said that the 129-decibel reading for the SST represents a noise level about two times higher than the 111 mark recorded by one 707 jet today, and about 2½ times higher than the low reading of 102 for another of the Boeings.

Rep. John Wydler (R-Long Island) had gone to Dulles to monitor independently the SST takeoff, but found he had arrived too late for the first flight. Then, his efforts were foiled when the British plane changed runways and veered away from where Wydler and others had set up shop.

Both Wydler and Rep. James Scheuer (D-Queens) suggested that the change of runways had been a deliberate effort to hamper noise testers. "These flights are supposed to be a 16-month test, and no test is possible if the planes change plans so that the noise levels cannot be monitored properly," Scheuer said.

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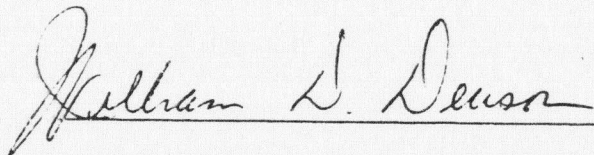
CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 1976,  
I served a true copy of the foregoing Memorandum and  
Affidavit on parties to said cause by mailing a true copy  
thereof to the following counsel:

John A. Wells, Esq.  
Rogers & Wells  
200 Park Avenue  
New York, New York 10017

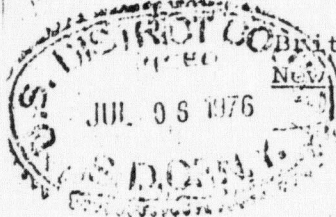
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MEMORANDUM



British Airways Board, et al. v. The Port Authority of  
New York and New Jersey, et al. 76 Civ. 1276 (MP)

*(Town of Hempstead, et al.)  
(Friends of the Earth, et al.)*

Several municipalities, organizations, and private individuals have moved to intervene in this action pursuant to Fed. R. Civ. P. 24(a), (b). For the reasons which appear hereafter, the motions are denied. Leave to renew the motions will be granted, however, on good cause shown.

Plaintiffs, two foreign airlines, seek declaratory and injunctive relief from the decision by the defendant Port Authority of March 11, 1976, which prohibited them from operating the Concorde supersonic jet aircraft at John F. Kennedy International Airport for six months. The applicants for intervention, who seek to join the suit as defendants, are entities and individuals who have an interest in the noise generated by the airport's operations, as a consequence of their location or residence in areas of Queens and Nassau Counties near the airport, and in environmental protection.<sup>1/</sup>

A. Intervention As of Right

Rule 24(a)(2), Fed. R. Civ. P., establishes a three-pronged test to assess a claim of intervention as of right. An applicant for such intervention must show that (1) he has "an interest relating to the property or transaction which is the subject of the action;" (2) he "is so situated that the disposition of the action

<sup>1/</sup>The applicants for intervention are the Town of Hempstead, the Villages of Lawrence, Cedarhurst, and Atlantic Beach, Robert F. Check, Mona Gottesman, Herbert Warshavsky, Joseph R. Lewis, Carol Berman, the Friends of the Earth, Inc., Metro Suburban Aircraft Noise Association, Inc., Howard Beach Association, Inc., and the Emergency Coalition to Stop the SST.

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may as a practical matter impair or impede his ability to protect that interest;" and (3) his interest is not "adequately represented by existing parties."

The proposed intervenors have little difficulty meeting the first two of these criteria. As the town governments, residents, community groups and environmental organizations located next to the airport's runways, the applicants have a strong, palpable interest in avoiding the operation of an aircraft whose take-off noise levels may be considerably more intrusive than those of existing aircraft. This interest seems sufficient to constitute an interest relating to the instant lawsuit and to the Port Authority's decision to bar the plane temporarily.

Secondly, the outcome of this suit may well impair the would-be intervenors' ability to protect their interests; should the airlines prevail, not only would the Concorde be permitted to fly, but this Court's decision might immunize the Port Authority from any tort liability in a subsequent action brought by these applicants for intervention. Cf. Farmers Educ. & Coop. Union v. WDAY, Inc., 360 U.S. 525, 535 (1959).

The applicants for intervention stumble on the third prong of the Rule 24(a)(2) test, however, for there is no reason to presume that the Port Authority will not vigorously and conscientiously defend the action which has been brought against it. Whether or not representation of an intervenor's interest by existing parties is to be considered inadequate hinges upon whether there has been a showing of "(1) collusion; (2) adversity of interests; (3) possible nonfeasance; or (4) incompetence." United States v. International Business Machines Corp., 62 F.R.D. 530, 538 (S.D.N.Y. 1974). No such showing has been made here.

While there may be an adversity of interests between the Port Authority and the proposed intervenors in some contexts, it is simply speculation to suppose that any such divergence in viewpoint is applicable on the facts of this case. The instant lawsuit will not resolve the merits of the supersonic aircraft, but simply the

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power and authority of a local airport to deny entry to a plane whose flights have been specifically approved by the federal government. The Port Authority would appear to have as great an incentive to safeguard the extent of its power from the instant challenge as would any of the proposed intervenors. The motions to intervene as of right must therefore be denied, although such denial shall be without prejudice to renewal in the event applicants can make a factual showing that the Port Authority is not vigorously litigating any aspect of the case. See New York Public Interest Research Group, Inc. v. Regents, 516 F.2d 350, 352 (2d Cir. 1975).

#### B. Permissive Intervention

The movants also seek to intervene pursuant to Rule 24(b). Judge Wyzanski has ably stated some of the factors which may affect the exercise of the district judge's discretion on such a motion:

It is easy enough to see what are the arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention. Crosby Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc., 51 F. Supp. 972, 973 (1943).

This conclusion appears especially apposite to the instant case, for the applicants for intervention might well be tempted to focus their attention on the aspects of the Concorde's operations of greatest concern to them, as opposed to the narrow legal questions placed in issue

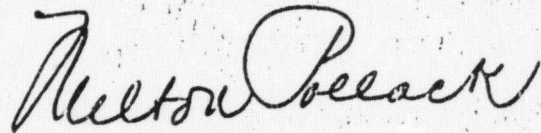
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by the pleadings in this action.

Accordingly, the motions to intervene are denied in all respects, though without prejudice to renewal upon good cause shown as discussed above. The applicants for intervention may participate in the case by submitting briefs as amici curiae if they wish to do so.

So Ordered.



Milton Pollack  
United States District Judge

July 6, 1976

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